

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED UNLAWFUL STATE
AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

First Name:* Karolis

Surname:* Kačerauskas

Address line 1:* Law Firm "Ellex Valiunas"

Address line 2: Jogailos str. 9/1

Town/City:* Vilnius

County/State/Province:

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Country:* Lithuania

Telephone: +370 5 2 681 888

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E-mail address:* karolis.kacerauskas@ellex.lt

Fax:

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes* No*

If yes, please also provide the following information

Complainant 1

Name of the person/firm you represent*: Interneto žiniasklaidos asociacija

Registration nr. of the entity: 302334852

Address line 1:* Gynėjų str. 16

Address line 2:

Town/City:* Vilnius

County/State/Province:

Postcode:* LT-01109

Country:* Lithuania

Telephone 1: +370 659 13149

Telephone 2:

E-mail address:* arnas@ventonuovo.lt

Fax:

Please attach proof that the representative is authorised to act on behalf of this person/firm.*

Power of Attorney issued by Interneto žiniasklaidos asociacija to the law firm "Ellex Valiunas" is enclosed to this Complaint as . The representative authorised to sign the Power of Attorney is indicated in the extract of the register of legal entities enclosed to this Complaint as Annex No. 15.

Yes* ~~No*~~

Complainant 2

Name of the person/firm you represent*: UAB All Media Lithuania

Registration nr. of the entity: 121393020

Address line 1:* Kalvarijų str. 135

Address line 2:

Town/City:* Vilnius

County/State/Province:

Postcode:* LT-08221

Country:* Lithuania

Telephone 1: +370 5 203 0250

Telephone 2:

E-mail address:* info@tv3.lt

Fax:

Please attach proof that the representative is authorised to act on behalf of this person/firm.*

Power of Attorney issued by UAB All Media Lithuania to the law firm "Ellex Valiunas" is enclosed to this Complaint as Annex No. 16. The representative authorised to sign the Power of Attorney is indicated in the extract of the register of legal entities enclosed to this Complaint as Annex No. 17.

Yes* ~~No*~~

Complainant 3

Name of the person/firm you represent*: UAB All Media Radijas

Registration nr. of the entity: 126021636

Address line 1:* Kalvarijų str. 135

Address line 2:

Town/City:* Vilnius

County/State/Province:

Postcode:* LT-08352

Country:* Lithuania

Telephone 1: +370 5 203 0250

Telephone 2:

E-mail address:* biuras@tv3.lt

Fax:

Please attach proof that the representative is authorised to act on behalf of this person / firm.*

Power of Attorney issued by UAB All Media Radijas to the law firm "Ellex Valiunas" is enclosed to this Complaint as Annex No. 18. The representative authorised to sign the Power of Attorney is indicated in the extract of the register of legal entities enclosed to this Complaint as Annex No. 18.

Yes* No*

3. Please select one of the following options, describing your identity*

- a) Competitor of the beneficiary or beneficiaries
- b) Trade association representing the interests of competitors
- c) Non-governmental organisation
- d) Trade union
- e) EU citizen
- f) Other, please specify

Please explain why and to what extent the alleged State aid affects your competitive position/the competitive position of the person / firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659 / 1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the

European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

I. THE COMPLAINANTS AND THEIR ACTIVITIES

This Complaint is hereby presented to the European Commission by two complainants: (i) Interneto žiniasklaidos asociacija, and (ii) UAB All Media Lithuania.

The first complainant is Interneto žiniasklaidos asociacija (Online Media Association), a public legal entity with limited civil liability, coordinating activities of the association members, representing their interests, defending them and fulfilling other public interests specified in the Articles of Association (hereinafter – **IZA**).¹ IZA is operating under the Constitution of the Republic of Lithuania, the Civil Code of the Republic of Lithuania, the Law on Associations of the Republic of Lithuania, other legal acts and IZA Articles of Association.²

The main objectives of IZA are, *inter alia*:

- To meet the needs of its members in online media and marketing activities in this sector, to promote cooperation and mutual support, to represent the rights of its members, to defend their legitimate interests in public, state and international organisations and to satisfy public interest activities as well as to provide services in these areas to members of the public;³
- To establish new and strengthen existing relations with similar organisations in the country and abroad.⁴

One of IZA's functions is also to represent the rights and interests of the members of the association in state government and management institutions and foreign organisations.⁵ Whilst exercising its functions IZA is entitled to prepare or participate in the preparation of draft laws, normative acts or other documents regulating the activities of the media sector.⁶

The members of IZA are the following companies, *inter alia*, operating in the online media segment⁷:

- DELFI, UAB (hereinafter – **Delfi group**);
- UAB “15min” (hereinafter – **15min group**);
- UAB “Lrytas” (hereinafter – **Lrytas group**);

Hereinafter jointly referred to as **IZA members** and each as **IZA member**.

The second and third complainant is **UAB All Media Lithuania (holding television license) and UAB All Media Radijas (holding radio licence)**, private limited liability companies, established and operating under the laws of the Republic of Lithuania (hereinafter – **TV3** or the **Complainant 2**). TV3 carries out a wide scope of activities in the media sector, including (i) broadcasting activities on TV and radio, (ii) operation of video on demand (VOD) platform tv3play.lt, which offers both free access to advertising supported VOD (“**AVOD**”) and subscription based access VOD (“**SVOD**”); (iii) operation of online news and entertainment portals, including www.tv3.lt, which is also accessible via mobile application “TV3.lt”⁸. The scope of activities of TV3 in Lithuania is generally analogous to the ones

¹ Annex No. 22 Articles of Association of IZA, Art. 1.1.

² Annex No. 22 Articles of Association of IZA, Art. 1.2.

³ Annex No. 22 Articles of Association of IZA, Art. 2.1.

⁴ Annex No. 22 Articles of Association of IZA, Art. 2.2.2.

⁵ Annex No. 22 Articles of Association of IZA, Art. 2.2.5.

⁶ Annex No. 22 Articles of Association of IZA, Art. 2.2.7.

⁷ Annex No. 20 Certificate on the list of members of IZA.

⁸ Interactive Access: <<https://play.google.com/store/apps/details?id=lt.tv3.httpstv3.tv3lt&hl=lt>>.

engaged by the beneficiary of unlawful aid in question, thus TV3 group is affected by the infringement of state aid rules.

IZA and TV3 are hereinafter together referred to as the **Complainants**.

II. BENEFICIARY OF UNLAWFUL STATE AID

The beneficiary of unlawful state aid in question is national public service broadcaster Viešoji įstaiga "LIETUVOS NACIONALINIS RADIJAS IR TELEVIZIJA" (hereinafter – **LRT** or the **Beneficiary**). Activities performed by LRT include 7 media channels on 4 platforms:⁹

- TV: "LRT Televizija", "LRT Plus", "LRT Lituanica" television channels;
- Radio: "LRT Radijas"; "LRT Klasika"; "LRT Opus" radio stations;
- Internet: LRT.lt¹⁰ online media portal which, *inter alia*, includes: (i) LRT online news content, (ii) LRT.lt Mediateka section, which enables to access records of various content broadcasted and recorded by LRT¹¹, (iii) LRT.lt Mediateka live broadcasting of all LRT media channels on the LRT.lt portal;
- Mobile application: "LRT.lt".

III. COMPETITORS OF BENEFICIARY

As demonstrated above, LRT operates on all media platforms in each of which it competes with private market participants, including IZA members and TV3. Thus, LRT's activities have a significant impact to the whole media market, *including* online media market.

- In the TV broadcasting segment, the main competitors of LRT are¹²:
 - Uždaroji akcinė bendrovė "LAISVAS IR NEPRIKLAUSOMAS KANALAS"¹³ (hereinafter – **LNK group**) running "LNK", "BTV", "TV1", "Info TV" and "2TV" television channels.
 - TV3 (Complainant 2) running free-to-air television channels "TV3", "TV6" and "TV8"; as well as online video on-demand services "TV3 play".¹⁴
 - Lrytas, UAB (IZA member) running "Lietuvos rytas TV" television channel¹⁵.
 - Delfi group (IZA member) running "Delfi TV"¹⁶.

⁹ See LRT activities explained more in detail in Section 6(d) of this Complaint.

¹⁰ Interactive Access: <www.lrt.lt>.

¹¹ Interactive Access: <<https://www.lrt.lt/mediateka>>.

¹² Full list of market operators engaged in television and radio broadcasting / rebroadcasting is provided at the official website of Radio and Television Commission of Lithuania, which is the authority responsible for licensing – <https://www.rtk.lt/en/providers?type=all>

¹³ Interactive Access: <<https://lnk.lt/apie>>.

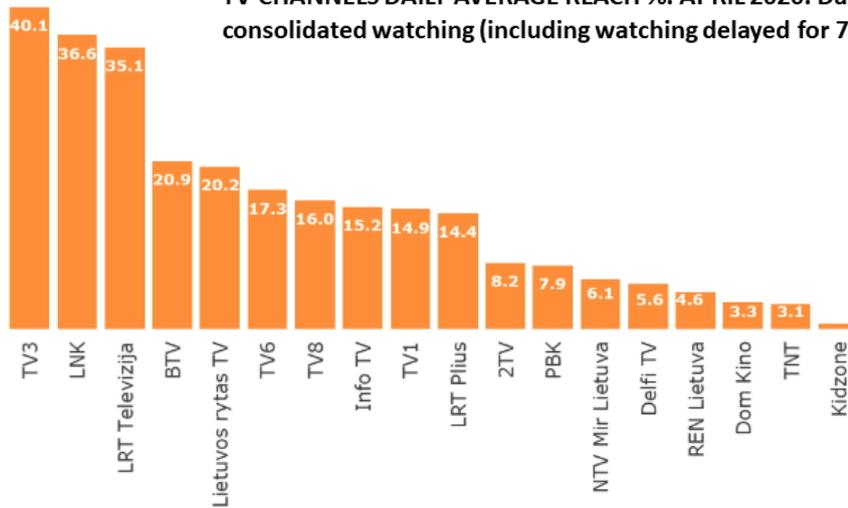
¹⁴ For more information see <https://tv3group.eu/brands-products/>.

¹⁵ Interactive Access: <<https://tv.lrytas.lt/>>.

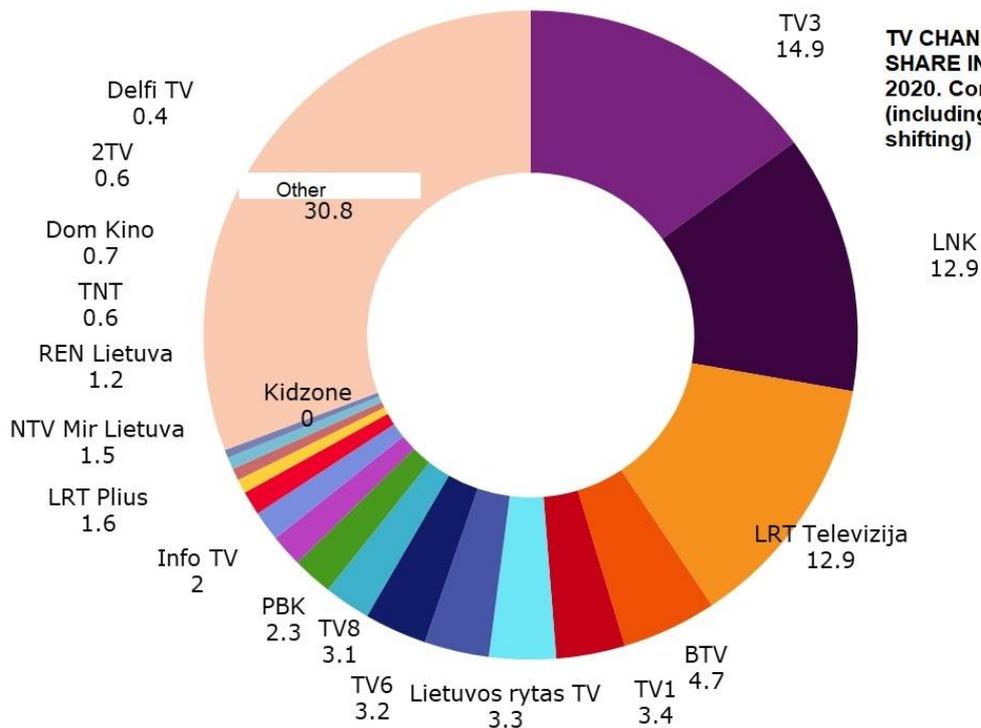
¹⁶ Interactive Access: <<https://www.rtk.lt/en/providers/delfi-uab>>

- The data presented in the charts below shows that according to the reach of audience as well as audience share in Lithuania, LRT television channel ranks in a very strong third place, relatively close to television channels managed by TV3 and LNK groups.

TV CHANNELS DAILY AVERAGE REACH %. APRIL 2020. Data on consolidated watching (including watching delayed for 7 days)



TV CHANNELS AUDIENCE SHARE IN LITHUANIA. APRIL 2020. Consolidated share (including 7 days time-shifting)



Translation from Lithuanian¹⁷

- In radio broadcasting segment, the main competitors of LRT are¹⁸:

¹⁷ Please see the original chart within interactive access: <<http://www.kantar.lt/lt/news/tv-auditorijos-tyrimo-rezultatai-2020-m-balandis/>>.

¹⁸ Full list of market operators engaged in television and radio broadcasting / rebroadcasting is provided at the official website of Radio and Television Commission of Lithuania, which is the authority responsible for licensing – <https://www.rtk.lt/en/providers?type=all>

- Uždaroji akcinė bendrovė “M-1” and its subsidiaries / group companies (**M1 group**) running “M-1”¹⁹, “M-1 Plus”²⁰, “Lietus”²¹, “Laluna”²² and “Raduga”²³ radio stations; and
- Uždaroji akcinė bendrovė “RADIOCENTRAS”²⁴ and its subsidiaries / group companies (**Radiocentras group**) running “Radiocentras”²⁵, “Zip FM”²⁶, “Rusradio LT”²⁷, “Relax FM”²⁸ and “Rock FM”²⁹ radio stations.
- TV3 group also operates in radio broadcasting segment by running “Power Hit Radio” station, which is one of the top 3 commercial radio stations in Lithuania. As already mentioned, UAB All Media Radijas broadcasts radio program “Power Hit Radio”³⁰.
- In online media segment, the main competitors of LRT are:
 - 15min group (IZA member) running online news portal www.15min.lt as well accessible via the mobile application “15min”³¹;
 - TV3 group (Complainant 2) running, *inter alia*, online news portal www.tv3.lt which is also accessible via the mobile application “tv3.lt”³²;
 - Lrytas group (IZA member) running online news portal www.lrytas.lt as well accessible via the mobile application “Lrytas”³³;
 - Delfi group (IZA member) running online news portal www.delfi.lt as well accessible via the mobile application “Delfi.lt”³⁴; and
 - Uždaroji akcinė bendrovė “VERSLO ŽINIOS” (**Verslo žinios group**) running online news portal www.vz.lt as well accessible via the mobile application “Verslo žinios”³⁵.

In this regard it is worth mentioning that Delfi group is controlled by Estonian capital company Aktsiaselts Ekspress Grupp, 15min group is controlled by the Estonian capital company AS Postimees Grupp, Verslo žinios group is controlled by the Swedish capital company Bonnier Business to Business³⁶. On its turn, since 2017 TV3 is controlled by global asset management firm Providence Equity Partners, while previously TV3 was controlled by Modern Times Group AB, company established in Sweden, which shares are listed in Stockholm’s Nasdaq stock exchange. Thus, cross-border element in this market is evident.

IV. COMPETITION IN TELEVISION, RADIO BROADCASTING AND ONLINE MEDIA MARKET

Complainants are direct competitors of the Beneficiary.

¹⁹ Interactive Access: <<https://www.m-1.fm/>>.

²⁰ Interactive Access: <<https://www.pliusas.fm/>>.

²¹ Interactive Access: <<https://www.lietus.fm/>>.

²² Interactive Access: <<http://www.laluna.lt/>>.

²³ Interactive Access: <<https://www.raduga.lt/>>.

²⁴ Interactive Access: <<http://www.achemosgrupe.lt/lt/bendrove/uab-radiocentras-grupe/>>.

²⁵ Interactive Access: <<https://rc.lt/>>.

²⁶ Interactive Access: <<https://zipfm.lt/>>.

²⁷ Interactive Access: <<https://rusradio.lt/>>.

²⁸ Interactive Access: <<https://relaxfm.lt/>>.

²⁹ Interactive Access: <<https://rockfm.lt/>>.

³⁰ Interactive Access: <<https://www.rtk.lt/en/providers/uab-all-media-radijas>>

³¹ Interactive Access: <<https://play.google.com/store/apps/details?id=com.gludis.fifteenmin&hl=lt>>.

³² Interactive Access: <<https://play.google.com/store/apps/details?id=lt.tv3.httpstv3.tv3lt&hl=lt>>.

³³ Interactive Access: <<https://play.google.com/store/apps/details?id=lt.lrytas.readerLrytas&hl=lt>>.

³⁴ Interactive Access: <<https://play.google.com/store/apps/details?id=lt.delfi&hl=lt>>.

³⁵ Interactive Access: <<https://play.google.com/store/apps/details?id=apps.an.vz.lt&hl=lt>>.

³⁶ Interactive Access: <<http://www.bonnierb2b.com>>.

Competition between LRT and Complainant 2 in television and radio broadcasting market is quite evident, since TV3 operates free-to-air and VOD television and radio channels directly competing with free-to-air radio and television channels operated by LRT.

Yet, competition in online market should be discussed in more detail since operation in online media channel may take variety of forms. IZA members and TV3, provide very similar services to the ones offered by LRT on online portal LRT.lt and “LRT.lt” mobile application.

Specifically, IZA members carry out the following services:

- Online news portal www.delfi.lt and “Delfi.lt” mobile application provides:
 - text news notifications;
 - online audio-visual content archives branded “Delfi.tv”;
 - broadcast of “Delfi.tv” independent television channel³⁷;
 - text news / information notifications on paid access portal ran under the brand “Delfi Plius”. The respective portal publishes news / information without advertisements and provides access to publicly not available content³⁸, including content produced by “The Economist”, “Bloomberg” and “Harvard Business News”³⁹.
- Online news portal www.15min.lt and “15min” mobile application offers the following services:
 - text news notifications;
 - audio-visual news content;
 - text news / information notifications on paid access portal ran under the brand “15min MAX”; in this portal news / information is published without advertisements and provides access to content not made public elsewhere, including content produced by “Atlantic”, “Quartz”, “Rolling Stone”, “MIT Technology”, “New Scientist”, etc⁴⁰.
- Online news portal www.lrytas.lt and “Lrytas” mobile application offers the following services:
 - text news notifications;
 - lrytas.tv audio-visual content;
 - broadcasted content of the television channel “Lietuvos ryto televizija”⁴¹,
 - foreign agencies audio-visual content;
 - live broadcasts from Lrytas studio.
- Online news and entertainment portal www.tv3.lt and “TV3.lt” mobile application of the Complainant 2 – provide the following content:
 - text news notifications;
 - audio-visual news content;

³⁷ Interactive Access: <<https://www.delfi.lt/video/delfi-tv/>>.

³⁸ Interactive Access: <<https://www.delfi.lt/plius/landing/>>.

³⁹ Interactive Access: <<https://www.delfi.lt/plius/>>.

⁴⁰ Interactive Access: <<https://www.15min.lt/max/>>.

⁴¹ Interactive Access: <<https://tv.lrytas.lt/>>.

- online broadcast of TV3 television news program;
- wide scope of different kinds of entertaining textual and audio-visual content, including own production of online shows.

V. DIRECT EFFECT ON COMMERCIAL INTERESTS OF THE COMPLAINANTS

As widely discussed in Section 7(d) of this Complaint, irrespective of differences in the services offered by the Complainants (online, radio, television, free-to-air, VOD, etc.), both the Complainants and LRT compete for the same target – *audience*. Commercial operators use audience to generate (i) revenue from customers of advertising services and (ii) revenue from consumers using paid access services. Public service broadcaster – LRT – uses audience to fulfil its statutory mission and generate additional income from advertising services, which are sold in competition with commercial operators. At the same time competition between LRT and the Complainants takes part in the adjacent market for acquisition of content used in media channels as well as labour market. In this respect interests of IZA members and TV3 are affected by the unlawful state aid granted to LRT. IZA members and TV3 continuously and substantially invest into the development of their media channels and services provided therein. Such investments allow them to compete for the reach and share of the audience and, respectively, generate revenue. Whereas LRT uses unlawful state aid for the same purpose and thus affects legitimate interest of other market participants (including IZA members and TV3) to fairly compete on market conditions and distorts competition within the legal framework of the EU.

Accordingly,

- The interests of Complainants are affected by the unlawful state aid granted to LRT;
- Article 24(2) of Procedural Regulation⁴² and para. 69 of the Code of Best Practices for the conduct of State aid control procedures⁴³ provides that any interested party may submit a complaint to inform the Commission of any alleged unlawful aid or any alleged misuse of aid;
- Article 1(h) of the Procedural Regulation defines interested parties, *inter alia*, as any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular, *inter alia*, competing undertakings and trade associations.

Therefore, IZA, legitimately pursuing its objectives and executing the tasks assigned by its members, within the interest to defend its members' legal and economic interests, together with TV3, seeking to defend its legal and economic interests, both of whose interests were breached by the unlawful aid to LRT, jointly submit this Complaint and respectively ask the Commission to register it as a formal Complaint.

4. Please select one of the following two options*

- Yes, you may reveal my identity
- No, you may not reveal my identity

If not, please specify the reasons:

⁴² Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

⁴³ Code of Best Practices for the conduct of State aid control procedures C/2018/4412 OJ C 253.

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5 and 6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: The Republic of Lithuania

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central Government: Parliament of the Republic of Lithuania

~~Region (please specify):~~

~~Other (please specify):~~

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

The alleged state aid measure takes the form of annual grants paid from the State budget to Lithuanian public service broadcaster – LRT. Entitlement to annual grants is currently established in the Law on the National Radio and Television introduced on 23-12-2013⁴⁴ (hereinafter – **Law on LRT**). This law was recently amended and shall be provided in a new wording from 01-01-2021. Respectively, below the Complainants provide information on the grant of unlawful state aid under (i) existing legislation (existing model) and, subsequently, (ii) discuss legislative changes, which shall come into force from 01-01-2021.

I. SITUATION UNDER EXISTING MODEL

Entitlement to annual grants is provided in Art. 15 of the Law on LRT⁴⁵, which stipulates that public service broadcaster of Lithuania – LRT – is legally entitled to a fixed share of national tax income, which is paid without any recourse to the costs incurred by LRT in pursue of objectives imposed on LRT by the law:

- 1.5%⁴⁶ of personal income tax (GPM) collected in the year before a preceding year; and
- 1.3% of excise tax collected in the year before a preceding year.

The Law on LRT also establishes the minimum annual grant, which must be allocated to LRT each year irrespective of national tax income. The law stipulates that the annual grant allocated to LRT shall not be less than the funding allocated to LRT from the State budget calculated based on the 2012 budget revenue⁴⁷. Such financing model has been established in the Law on LRT on 23-12-2013 and remains in force without any modification since 01-01-2015 (yet, amendments shall come into force since 01-01-2021, for more details see below).

⁴⁴ Republic of Lithuania Law Amending Articles 6, 7 and 15 of the Law on National Radio and Television, *Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymo 6, 7, 15 straipsnių pakeitimo ir papildymo įstatymas* (TAR, Jan 6, 2014, No. 33). Interactive Access: <<https://www.e-tar.lt/portal/en/legalAct/f321664076d911e38da4e231c7b4cf37>>.

⁴⁵ Art. 19 of the Amendment to the Law on LRT.

⁴⁶ 1% from 01.01.2021, under the Amendment to the Law on LRT.

⁴⁷ Art. 15 of Law on LRT.

It should be noted that Lithuanian Government seems to accept that such financing amounts to “state aid” at least since 2017 when Lithuania made the respective notifications of state aid granted to public service broadcaster on EU state aid transparency website (SA.44185). According to the information provided therein, Lithuania granted state aid to LRT in 2017-2019. Yet, transparency website contains no data with regards to grants paid to LRT in 2015 and 2016. The omission of the latter data seems to be related to commencement of operations of state aid transparency website, rather than any changes in the national legislation regulating payment of annual grants to LRT. As suggested by the data published on the state aid transparency website, LRT has been allocated with the following state aid:

- 36,494,000 EUR has been granted on 26.01.2017⁴⁸;
- 38,841,000 EUR has been granted on 16.01.2018⁴⁹;
- 41,649,000 EUR has been granted on 30.01.2019⁵⁰.

Lithuania published a notice on state aid provided to LRT on the state aid transparency website under a case number SA.44185⁵¹ (hereinafter – **Information Notice**). The same case number is allocated to the entire financing of the Lithuanian cultural sector. In this context, it does not come as a surprise that in the Information Notice Lithuania claims that state aid to LRT should be considered compatible under Art. 53 of the General Block Exemption Regulation, namely Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (the **GBER**). As shall be demonstrated in Section 8 of this Complaint, Art. 53 does not constitute a suitable legal basis for the financing of public service broadcasters and, moreover, online media providers. Thus, such grounds of compatibility should be rejected by the Commission.

II. AMENDMENTS, WHICH SHALL COME INTO FORCE FROM 01-01-2021

As noted above, on 07-05-2020 the Parliament adopted new version of the Law on LRT, which shall come into force on 01-01-2021⁵² (hereinafter – **new Law on LRT**). According to preparatory material supporting the legislative amendments, need of such amendment was instigated by the lack of transparency, control and possible abuses in spending budget allocated to LRT:

“Over the past years, the competent authorities have identified a whole series of violations or possible preconditions for corruption in LRT, which call into question the transparency of the management of this institution and the possibilities for self-regulation of the existing management model. At the request of the Parliament Temporary Commission on the granting of expert assistance, assessments, especially in the fields of programme procurement and public procurement, have been submitted by both the Special Investigation Service and the Public Procurement Office. For example, high value public procurement infringements have been identified which restrict competition. The Provisional Commission for the Investigation of LRT Management and Economic and Financial Activities established cases when entire divisions of the LRT – such as the Administrative Commission – did not perform their statutory functions, while the Council failed to take timely measures to ensure compliance with the law.

The project is aimed at updating the governance model of LRT, enabling experts with management, legal and economic knowledge to participate in the management of LRT. The aim is also to increase the independence of the national broadcaster from politicians, its openness and accountability to the public, to ensure constant external auditing, to improve the mechanism

⁴⁸ Annex No. 10 State Aid Transparency Award Module Ref. No. TM-10077534 SA. 44185.

⁴⁹ Annex No. 11 State Aid Transparency Award Module Ref. No. TM-10157878 SA. 44185.

⁵⁰ Annex No. 12 State Aid Transparency Award Module Ref. No. TM-10158280 SA. 44185.

⁵¹ Annex No. 9 Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, SA.44185 (2016/X).

⁵² Annex No. 2 Amendment to the Republic of Lithuania Law on the National Radio and Television, *Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymo Nr. I-1571 pakeitimo įstatymas No. XIII-2929*, will come into force on January 1, 2021.

of self-regulation of the national broadcaster, to regulate the activities of the LRT portal, which in the previous version of the law was not at all subject to the regulation of the law.”⁵³

At the same time, the new Law on LRT did not change the design of financing of LRT activities. LRT shall remain to be entitled to the annual grants from the State budget, which shall not be linked to the costs incurred by LRT in performing its statutory duties. To be specific, Art. 19(5) of the New Law on LRT shall provide that public service broadcaster of Lithuania – LRT – is legally entitled to a fixed share of national tax income:

- 1.0% of personal income tax (GPM) collected in the year before a preceding year; and
- 1.3% of excise tax collected in the year before a preceding year.

At the same time the law also imposed new floors for annual grants paid to LRT. Art. 19(5) of the New Law on LRT stipulates that financing of LRT from the State budget shall not be lower than the one actually received by LRT in 2019, which is 41,649,000 EUR⁵⁴.

Notably, imposition of such floor shall make LRT totally immune to the economic downturn in media sector caused by COVID-19. LRT shall be able to compete on the market (e.g. market for the acquisition of content, market for labour) as if COVID-19 would not take place at all, while the remaining market participants shall need to compete for the resources facing reduction of their budgets by double-digit percentages.

b) For what purpose was the alleged aid given (if known)?

Information Notice claims that LRT is granted state aid for culture and heritage conservation (i.e. aid considered compatible under Art. 53 of GBER).

Yet, the actual purpose of state aid provided to LRT seems to be related to the financing of operations of public service broadcaster. As provided in Art. 15(1) of the Law on LRT⁵⁵, annual grants from the State budget are provided to LRT (its operations in general) aiming to finance its operations, which entail the public service broadcasting and wide range of related activities (for more details see point D of this Complaint).

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

According to information published in the Information Notice, state aid provided under the case number SA.44185⁵⁶ (which claims compatibility of state aid provided to LRT based on Art. 53 of GBER) the total budget of state aid allocated under the scheme within the period 20.11.2015-31.12.2020 amounts to EUR 160,237 million. Yet, such number is highly inaccurate since (i) such values represent the entire value of state aid provided under the scheme to cultural sector (not only LRT) and, (ii) such figure is generally inaccurate since the budget of aid notified by Lithuania is exceeded merely by the total amount of state aid allocated to LRT within the period 2015-2020.

⁵³ Paragraph 1 of Explanatory note to the Draft Law Amending the Law of the Republic of Lithuania on Radio and Television No I-1571, Interactive Access: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/a9119440f86f11e895b0d54d3db20123?jfwid=p888e8kgo>.

⁵⁴ Annex No. 12 State Aid Transparency Award Module Ref. No. TM-10158280 SA. 44185.

⁵⁵ Art. 19(1) of the New Law on LRT.

⁵⁶ Annex No. 9 Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, SA.44185 (2016/X).

In this respect, IZA believes that the value of state aid provided to LRT is best reflected in the annual budgets approved by Lithuania each year. According to the information provided in the laws approving national budget of Lithuania for the respective year, since 2015 LRT has been allocated with the following grants of state aid:

- EUR 46,306,000 has been allocated to LRT in 2020⁵⁷;
- EUR 41,649,000 has been allocated to LRT in 2019⁵⁸.
- EUR 38,841,000 has been allocated to LRT in 2018⁵⁹;
- EUR 36,494,000 has been allocated to LRT in 2017⁶⁰;
- EUR 33 674,000 has been allocated to LRT in 2016⁶¹;
- EUR 29,964,666 has been allocated to LRT in 2015⁶²;
- In total within the 2015-2020 period LRT has been granted with state aid in the amount of **EUR 226,928,666**.

As noted above, since 01-01-2021 LRT shall be allocated with lower percentage of national tax income, yet annual grants allocated to LRT shall not be lower than 41,649,000 EUR, which is equal to the budget allocated to LRT in 2019.

⁵⁷ See Annex No. 2 to the national budget of Lithuania for 2020, which was approved by Lithuanian Parliament by the Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2020, *Lietuvos Respublikos 2020 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 27, 2019, No. 21410), Annex No. 8.

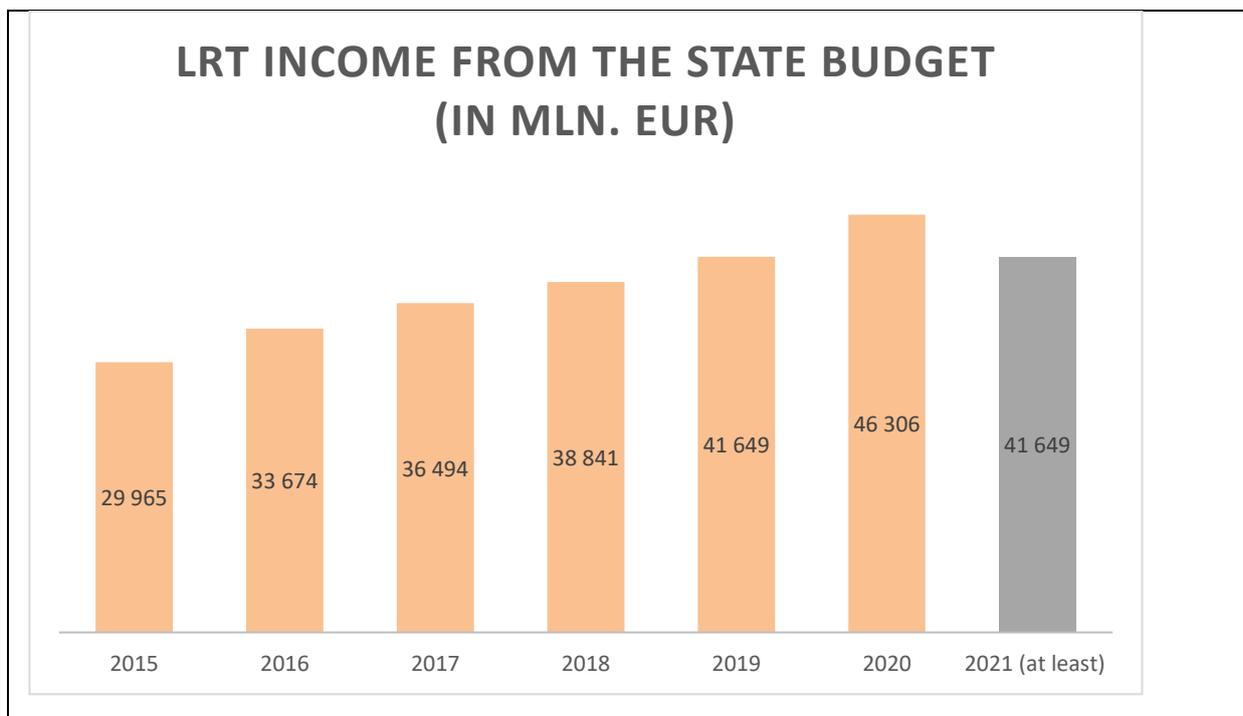
⁵⁸ Such amount of aid has been reported on state aid transparency website Ref. No. TM-10158280 SA. 44185 see Annex No. 12; the same amount of aid has been indicated in Annex No. 2 to the national budget of Lithuania for 2019, which was approved by Lithuanian Parliament by the Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2019, *Lietuvos Respublikos 2019 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 20, 2018, No. 20968), Annex No. 7.

⁵⁹ Such amount of aid has been reported on state aid transparency website Ref. No. TM-10157878 SA. 44185 see Annex No. 11; the same amount of aid has been indicated in Annex No. 2 to the national budget of Lithuania for 2018, which was approved by Lithuanian Parliament by Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2018, *Lietuvos Respublikos 2018 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 20, 2017, No. 20572), Annex No. 6.

⁶⁰ Such amount of aid has been reported on state aid transparency website Ref. No. TM-10077534 SA. 44185 see Annex No. 10; the same amount of aid has been indicated in Annex No. 2 to the national budget of Lithuania for 2017, which was approved by Lithuanian Parliament by Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2017, *Lietuvos Respublikos 2017 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 29, 2016, No. 29872), Annex No. 5.

⁶¹ Annex No. 2 to the national budget of Lithuania for 2016, which was approved by Lithuanian Parliament by Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2016, *Lietuvos Respublikos 2016 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 21, 2015, No. 20134), Annex No. 4.

⁶² Annex No. 2 to the national budget of Lithuania for 2015, which was approved by Lithuanian Parliament by Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2015, *Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 23, 2014, No. 20611), Annex No. 3.



d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

The beneficiary of state aid is **Viešoji įstaiga “LIETUVOS NACIONALINIS RADIJAS IR TELEVIZIJA”** (“LRT”), legal entity code 124241078, registered office at S. Konarskio g. 49, Vilnius.

LRT is nominated as national public service broadcaster of Lithuania, having a mission to serve the public by providing objective, reliable information to Lithuanian people living in the country and the world, to create and broadcast professional educational, cultural and entertainment programmes that mobilize and unify for progress.⁶³

Operations of LRT are regulated mainly by the following laws:

- Law on LRT⁶⁴, which is specifically devoted to regulation of operations of LRT: its establishment, management, activity, reorganisation and liquidation as well as sources of financing.
- Law on Public Information⁶⁵, which establishes procedure for collecting, preparing, publishing and disseminating public information, the rights, duties and responsibilities of producers, disseminators of public information, their participants, journalists and the institutions regulating their activities; and
- Law on Public Institutions⁶⁶, which establishes legal basis of operation of entities having legal status of a public establishment.

⁶³ See LRT website <<https://apie.lrt.lt/>>.

⁶⁴ Art. 1 of Law on LRT, Art. 1 of the New Law on LRT.

⁶⁵ Lietuvos Respublikos visuomenės informavimo įstatymas (Valstybės žinios, Jul 26, 1996, No. 71-1706). Interactive Access: <<https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/asr>> (**Law on Public Information**).

⁶⁶ Lietuvos Respublikos viešųjų įstaigų įstatymas (Valstybės žinios, Jul 19, 1996, No. 68-1633) Interactive Access: <<https://www.e-tar.lt/portal/en/legalAct/TAR.1E52802BE548/dlhJDREhEp>> (**Law on Public Institutions**).

Currently, activity of LRT is organised in 7 media channels broadcasted / published on 4 different platforms:

- TV platform: (i) “LRT Televizija” channel, the content of which is designed to the general audience; (ii) “LRT Plius” channel, the content of which is designed to additional and specialised content, mostly focusing on culture and sport; (iii) “LRT Lituanica” channel, which historically focused on the Lithuanian diaspora abroad and therefore is broadcasted over the internet (earlier was broadcasted through satellite). However, this channel is also broadcasted free to air over terrestrial network in some regions of Lithuania;
- Radio platform: (i) “LRT Radio” station, the content of which is designed to the general audience; (ii) “LRT Klasika” station, the content of which is designed to specialised content, focusing mostly on culture, classical music; (iii) “LRT Opus” station, which broadcasts alternative music and content for the younger audience (as claimed by LRT);
- Internet platform: LRT.lt online media portal which, *inter alia*, includes: (i) LRT online news content⁶⁷ (ii) LRT.lt “Mediateka”, which enables to access records of various content broadcasted and recorded by LRT⁶⁸; (iii) LRT.lt “Mediateka” live broadcasting of all LRT media channels on the LRT.lt portal^{69,70}
- LRT activities are also carried out on the mobile application, through which the full content of the news portal LRT is reached.⁷¹

III. LEGAL REGULATION OF LRT ACTIVITY STIPULATED IN THE CURRENT LAW ON LRT

As noted above, LRT activities expand to four different media platforms: TV, radio, internet and mobile applications. Historically, LRT concentrated its activities on TV and radio platforms. Yet, material shift of LRT interests took part in 2018 when Ms. Monika Garbačiauskaitė - Budrienė has been nominated as the General Director of LRT. Change of General Manager is quite important factor. Ms. Garbačiauskaitė - Budrienė has been employed by the leading online media portals *Delfi* (one of the Complainants) for 17 years and for many years held the position of chief editor of this online news portal. Thus, it is quite natural that since the appointment of new General Director, LRT placed heavy focus on its expansion into online platforms, which was neither requested, nor regulated by the Law on LRT. Regulation of LRT activities applied to this media channel shall come into force since 01-01-2021. Yet, currently valid Law on LRT is still focused only on LRT operations in television and radio platforms, remaining silent on legal requirements for LRT activity in online media business.

III.1 Activities of LRT related to the broadcasting of radio and television programmes

The Law on LRT provides quite extensive list of qualitative requirements, which apply to radio and TV programmes broadcasted by LRT.

At the outset it should be noted that statutory definitions of radio and television programmes clearly exclude news published in online news portals, thus none of qualitative requirements applied to radio and TV programmes apply to online media. What is considered to be radio and television programmes is specified by the Law on Public Information⁷². Definitions of radio and television programmes include *audio* and/or *visual content* disseminated to the public through electronic communications networks. Online media does not fall within the scope of such definitions since online media mostly concerns provision of *textual* information in online news platforms.

Returning to the requirements imposed for television and radio programmes, it should be noted that some of the principles are clearly stipulated (e.g. making broadcasts accessible in the entire territory of Lithuania, translation / subtitling of broadcasts, accessibility to handicapped persons). Yet, the vast

⁶⁷ Interactive Access: <<https://www.lrt.lt/>>.

⁶⁸ Interactive Access: <<https://www.lrt.lt/mediateka>>.

⁶⁹ See e.g.: <<https://www.lrt.lt/mediateka/tiesiogiai/lrt-televizija>>, < <https://www.lrt.lt/mediateka/tiesiogiai/lrt-radijas>>.

⁷⁰ See more about LRT activities: <<https://apie.lrt.lt/>>.

⁷¹ Interactive Access: <<https://play.google.com/store/apps/details?id=lt.mediapark.lrt&hl=lt>>.

⁷² Art. 2(50) and Art. 2(68) of Law on Public Information.

majority of requirements are expressed in the law as *principles* and *values*, which should be followed by LRT leaving plenty room for interpretation as to how such values should be implemented (complied with) in each particular instance. E.g. without any further guidance one can claim that broadcasting of dance contests on LRT television channels is necessary for the promotion of dance culture and, thus, falls within the special mission entrusted on LRT as national public service broadcaster, irrespective of the fact that simultaneously analogous dance contests are broadcasted by commercial operators. The same goes with movies, sports, etc. LRT broadcasts the same general entertainment movies, TV series, sports events or shows based on world famous TV formats which were and (or) are broadcasted by commercial free to air broadcasters. And all this content is considered as promoting culture, which in terms of very general and wide definition of culture, might be true. Yet, such flexibility is not suitable for the purpose service of general economic interests (which Lithuania probably had in mind in designing legislation governing operation of public service broadcaster), which should be sufficiently clear and precise according to the requirements of Art. 106(2) of TFEU.

To be specific on qualitative requirements applied with respect to television and radio broadcasts, please find below provisional list of requirements for radio and television programmes stipulated in Art. 3-4 of the Law on LRT:

- LRT must collect and publish information concerning Lithuania and the world, acquaint the public with the variety of European and world cultures and principles of modern civilisation, reinforce the independence and democracy of the Republic of Lithuania, create, nurture and protect the values of national culture, foster tolerance and humanism, culture of co-operation, thought and language, and strengthen public morality and civil awareness and develop the country's ecological culture;⁷³
- The content, form and language of the programmes to be developed must be of good quality;⁷⁴
- When preparing and broadcasting programmes, LRT must be guided by the principles of objectivity, democracy and impartiality, ensure freedom of speech and creative freedom, must reflect in its broadcasts diverse opinions and convictions, with individuals of various convictions having the right to take part and voice their views in them;⁷⁵
- Human rights and dignity must be respected in the broadcasts, and the principles of morality and ethics must not be violated;⁷⁶
- The reception zone of LRT radio and television program broadcasts must extend throughout the entire territory of the Republic of Lithuania;⁷⁷
- A variety of topics and genres must be ensured in the programmes of LRT and the broadcasts must be oriented towards the various strata of society and people of different ages, various nationalities and convictions. Biased political views should not be allowed to predominate in the programmes; The information presented in LRT information broadcasts and commentaries must be balanced and reflecting various political views, while opinions and factual news must be authorised, substantiated and comprehensive;⁷⁸
- Priority shall be accorded in LRT programmes to national culture as well as informational, world culture, journalistic, analytical, cognitive, educational, art and sports broadcasts. Mass culture must be reflected in review, informative and analytical type broadcasts;⁷⁹

⁷³ Art. 3(1) of Law on LRT.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Art. 3(1) of Law on LRT.

⁷⁷ Art. 3(2) of Law on LRT.

⁷⁸ Art. 4(1) of Law on LRT.

⁷⁹ Art. 4(2) of Law on LRT.

- The scope of European audiovisual works and audiovisual works produced by independent producers in LRT television programmes must be established by the Law on the Public Information. The display of European audiovisual works must be in line with a targeted European culture policy. LRT must broadcast programmes that open up the diversity of the history and presence of European nations,⁸⁰ etc.

Notably, the Law on LRT contains more requirements for radio and television programmes, as well as general prohibition of advertising (discussed below). Yet, the essential feature of all these requirements is that all of them are related to radio and television programmes. The respective statutory requirements do not apply to LRT operations in online media platform.

And what is important, the control of compliance with all such broadly determined principles and values is left to LRT itself.

The Law on LRT establishes two bodies to govern LRT – General Director and LRT Council⁸¹. Whilst the General Director takes the role of executive body, LRT Council appears to be the highest management body of LRT, implementing the role of stakeholders, with the only specific that LRT Council is bound by the law to serve the interests of society⁸², without specifying what such requirement means in practice.

LRT Council consists of 12 persons – actors of science, culture and society. Members of LRT Council are appointed by the Parliament (4 members), the President (4 members) and organisations specifically named in the Law on LRT (4 members). There is also a requirement for the members of LRT Council to be independent. Members of LRT Council may not be members of the Parliament, the Government, the Radio and Television Commission of Lithuania, civil servants of political (personal) confidence, persons working under employment contracts on radio and television programmes (including LRT), as well as owners and co-owners of radio and television stations.

In this context, it should be noted that statutory functions of LRT Council related to control of content created or broadcasted by LRT is specifically reserved for the radio and television programmes. In this respect Art. 10(1) of the Law on LRT the Republic of Lithuania, empowers LRT Council, *inter alia*, to:

- determine national strategy of LRT radio and television programmes;
- set the scope and structure of LRT radio and television programmes;
- set the number and purpose of radio and television programmes;
- approve the results of competitions on selection of LRT programmes.

Yet, it should be recognised that ability of LRT Council to exercise effective control on the content of radio and television programmes is heavily impeded by the conflict of interest created by different functions entrusted on LRT. On the one hand, LRT Council is bound to ensure that LRT would operate only within the boundaries of its special mission established in the law (e.g. provide different content from the one normally expected on commercial TV and radio channels) and control that advertising would be broadcasted on LRT programmes only in case it is strictly unavoidable. Yet, LRT Council is also responsible for the financial performance of LRT⁸³, wide reach of TV and radio programmes broadcasted thereby, and demand of users requesting for good quality content.

And admittedly, the latter parameters of *reach* and share of audience of radio and television programmes or *visits* to online portal appear the main element for the assessment of good management or bad performance of LRT, rather than serving mission entrusted on LRT by law. Such

⁸⁰ Art. 4(3) of Law on LRT.

⁸¹ Art. 9 of the Law on LRT.

⁸² Art. 9(2) of the Law on LRT.

⁸³ Art. 9(1) of Law on LRT and Art. 10(1) of the Amendment to the Law on LRT.

conclusion could be derived from the fact that the vast majority of tools used to analyse KPIs imposed on LRT by 2018-2020 strategy of LRT, which was approved by LRT Council⁸⁴, are related to % of reach achieved by programmes broadcasted by LRT⁸⁵. In the light such objectives, LRT is inclined to compete for the same resources, which are relevant for commercial market operators – labour, content, audience and income from advertising services, which finance such ambitions, while presence of conflict of interest prevent LRT Council from keeping LRT strictly within the scope of mission entrusted on LRT by the Law on LRT.

III.2 LRT's activities in online media segment

There are only few requirements imposed on LRT operations in online media segment, which could be derived from the general principles governing LRT mission as a whole. With respect to online media the following observations on the legal regulation are most relevant:

- The Law on LRT does not impose an obligation on LRT to operate online news portal (which automatically precludes possibility of Lithuanian Government to claim presence of SGEI to justify engagement of LRT in online media);
- The Law on LRT does not provide for any requirements for content of news published on the online news portal⁸⁶ (there is no properly defined SGEI in place);
- The Law on LRT does not provide for control mechanisms for the content published on online news portals (control of such content does not fall within the competence of the LRT Council or any other institution)⁸⁷;
- The Law on LRT does not impose prohibition of advertising on such online news portals, nor determines any mechanism which would regulate pricing of such advertising (e.g. that price should cover the costs of provision of service)⁸⁸;
- There are no restrictions in the Law on LRT, which would prevent LRT to use funds allocated from the State budget to finance its activities in online media segment. Indeed, although the Law on LRT is mostly dedicated to the regulation of provision of LRT radio and television broadcasting services, Art. 15 of the Law on LRT, which regulates the funding of LRT operations, specifically provides that funds received from the State budget may be used for LRT “activities” in general (i.e. not only for the broadcasting of radio and television programmes).

In this regard, it may be clearly concluded that the current Law on LRT stipulates the right of LRT to engage in online media segment and finance its operations from the annual grants received from the State budget. Yet the law does not impose any specific requirements for LRT operations in this segment. Since 2015 LRT was free to decide, whether to operate in such media segment, what content to publish, what investments to make and how / whether sell advertising in such media channel. As shall be provided below, more detailed regulation on LRT operations in online media segment shall be introduced only from 01-01-2021.

Sources of LRT income

Sources of LRT income are regulated by the Law on LRT. The law entitles LRT to generate income from the following sources:⁸⁹

⁸⁴ Interactive Access: <<https://apie.lrt.lt/storage/app/media/LRT%20Dokumentai/Taryba/Dokumentai/lrt-2018-2022-m-programu-strategija-patvirtinta-2017-11-21.pdf>>. (Annex No. 23).

⁸⁵ Annex No. 1 to the strategy, which is enclosed to this Complaint as Annex No. 23.

⁸⁶ New Law on LRT provides references to the online media when regulating the requirements applicable to the activity of LRT. See Art. 4(1), 4(3) of New Law on LRT.

⁸⁷ Control of content in the online portal falls within the competence of the LRT council under the New Law on LRT, see Art. 11(1)(2) of New Law on LRT.

⁸⁸ New Law on LRT provides the restrictions to the advertising in the online media portal. Yet, no specific pricing requirements remain foreseen. See Art. 6 of the New Law on LRT.

⁸⁹ Art. 15 of Law on LRT, Art. 19 of Amendment to the law on LRT.

- State budget (funds allocated to LRT are indicated by the separate line in the annual State budget of the Republic of Lithuania);
- revenue from the publication of sponsorship notices;
- revenue from sale of programmes;
- revenue from publishing activities;
- revenue from commercial and economic activities;
- income from support.

In this regard, it should be recalled that funding from the State budget established in the Law on LRT is not linked to the costs incurred by LRT in carrying out mission of public service broadcaster entrusted by the law. LRT is entitled to a fixed percentage of national tax income established in the Law on LRT, which resulted in a sharp increase of LRT income from EUR 29 million in 2015⁹⁰ to EUR 46 million in 2020⁹¹ merely in five year period (~38% increase). To illustrate significance of such increase it should be noted that TV advertising budget of TV3 within 2014-2019 period increased by 19%, i.e. LRT financing increased in approximately double speed in comparison to the market.

The second biggest stream of LRT income comes from advertising services. In this regard, it is worth mentioning that the Law on LRT restrict ability to generate such income; yet the law does not entirely eliminate LRT from advertising market. In particular, the Law on LRT impose general prohibition of advertising in radio and television programmes (Articles 6 and 7 of the Law on LRT), yet still allows three categories of advertising to be published in radio and television programmes :

- “*cultural, social or educational information*”⁹² which may be disseminated at certain fee or free of charge;
- “*sponsorship reports for cultural and sporting events and/or their broadcasts*”⁹³ if these events are intended to promote “*cultural, sporting, social and/or educational activities and policies or initiatives for such activities and policies*”⁹⁴;
- advertising and audio-visual communications which LRT must broadcast in compliance with its “*contractual obligations*” regarding the acquisition or granting of broadcasting rights for international events⁹⁵.

Although the above list of exclusions from the general prohibition of advertising seems to be rather narrow, in practice the line between prohibited and allowed advertising tends to be rather blurred, especially given the fact that there is no authority controlling full compliance with such prohibition. E.g. LRT takes an active role in public procurement tenders organised by public authorities, where LRT directly competes with commercial operators of advertising services and, as a general rule, wins

⁹⁰ Annex No. 2 to the national budget of Lithuania for 2015, which was approved by Lithuanian Parliament by Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2015, *Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 23, 2014, No. 20611), Annex No. 3.

⁹¹ See Annex No. 2 to the national budget of Lithuania for 2020, which was approved by Lithuanian Parliament by the Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2020, *Lietuvos Respublikos 2020 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 27, 2019, No. 21410), Annex No. 8.

⁹² Art. 6(1) of Law on LRT.

⁹³ Art. 6(1) of Law on LRT.

⁹⁴ Art. 7 of Law on LRT.

⁹⁵ Art. 6(1) of Law on LRT.

such tenders by offering “advertising” prices well below prices of analogous services offered by commercial operators.

For example according to the open data provided by Lithuanian public procurement office⁹⁶ within the period of 2015-2020: (i) LRT concluded public procurement contracts (as supplier) in the value of EUR 3,403,743, (ii) UAB “Laisvas ir nepriklausomas kanalas” (company code 123026090) concluded contracts in the value of EUR 3,190,101, and (iii) TV3 (Complainant 2, company code 121393020) – EUR 5,377,361. (see Annex No. 25- Annex No. 27)

Admittedly, such numbers include some services, which are not related to advertising. Yet, they are still valuable to provide with the general impression that LRT still operates rather extensively in advertising market irrespective of general prohibition of such advertising established in the law. And the most concerning issue of such activity appears to be the fact that subsidies paid to LRT from the State budget for the entire LRT operations provide LRT with the ability to offer prices of commercial services well below market price, thus distorting the competition.

According to the data provided in 2018 Financial report⁹⁷, commercial income of LRT (the term “commercial” is specifically used in the financial report) amounted to EUR 2,838 million⁹⁸, which increased by 8,5% in comparison to commercial income received in 2017⁹⁹. Major part of such income (EUR 2,0198 million) was generated by LRT from broadcasting of “sponsorship reports” and cultural, social and political information. According to 2018 financial report, other commercial income included sale of production and sublicences (EUR 0,237 million), rental of premises (EUR 0,301 million) and rental of equipment (EUR 0,088 million).

Although figures provided in 2018 LRT activity report¹⁰⁰ do not accurately correspond to the figures provided in 2018 LRT financial report, activity report provides additional information that:

- Income from “cultural, social or educational information” amounted to EUR 1,39 million;
- Income from “sponsorship reports for cultural and sporting events and/or their broadcasts”¹⁰¹ amounted to EUR 0,5 million; and
- Income from provision of advertising on news portal LRT.lt amounted to ~ EUR 83 000.

In this regard it is worth taking into account that income from the sale of advertising services reported by LRT in financial statements should be considered with a certain caution. Since LRT does not need to relate prices of its advertising services to costs (all costs are covered from the State budget), prices of advertising services provided by LRT do not necessarily correlate with market prices of analogous services. Indeed, LRT even officially admits in its 2018 LRT activity report that sale of advertising services was made below market price: “*The rates charged for broadcasting this information are lower than those available on Lithuanian advertising market. Discounts are applied to disseminate much of this information when LRT becomes an information partner or sponsor of various cultural, civic and sports projects.*”

In summary, majority of LRT income comes directly from the State budget. However, LRT is also entitled to commercial income: (i) income from advertising permitted by the Law on LRT in radio and television programmes, (ii) any income from other sources, such as advertising in online advertising portal LRT.lt, broadcasting sponsorship notices and cultural, social information; and (iii) rental of other services or assets provided by LRT.

III.3 Control of LRT expenses

⁹⁶ Interactive Access: <<https://vpt.lrv.lt/2015-2020-m-sudarytu-sutarciau-paieska>>

⁹⁷ Annex No. 24

⁹⁸ Page 3 of 2018 Financial Report.

⁹⁹ Page 3 of 2018 Financial Report.

¹⁰⁰ Annex No. 13 LRT activity report of 2018, *LRT 2018 m. veiklos ataskaita*. P. 65-66.

¹⁰¹ *Ibid.*

A key concern related to LRT funding originates from the fact that income and expenses of LRT are not controlled by any independent and/or external governmental institution, which would make its decisions free from any conflict of interest. To be specific:

- The law provides LRT with full autonomy to determine the price of its services (including the price of advertising services);
- LRT recognises in its financial statements that its income is distributed into commercial and non-commercial revenues (without going into much details). Yet, LRT does not have legal obligation to separate financial accounts, which would enable to control that revenues received from the State budget for the performance of special mission entrusted on LRT would not be used to cross-subsidize LRT commercial activities and activities clearly falling outside the boundaries of its mission (e.g. operation of online news portal, which is clearly not required by the Law on LRT).
- There is no external and/or independent authority, which would assess reasonableness of costs incurred by LRT (i.e. that LRT costs, especially costs paid for acquisition of content, which is difficult to control, would be based on market prices).

In this respect it should be admitted that there are two entities, which theoretically could exercise control on LRT activities and finances: (i) LRT Council; and (ii) Parliament of the Republic of Lithuania. Yet their control on actual expenditure of LRT (net costs of provision of mission entrusted on LRT) are rather limited.

In this case it is rather clear that the Parliament performs *political* control of LRT. Such control is exercised via obligation of LRT Council to provide Parliament with the annual report on LRT operations. Yet, it is rather clear without saying that such reporting obligation does not include consideration of individual costs elements incurred by LRT.

Respectively, control of costs incurred by LRT is exercised only by LRT itself, specifically LRT Council – one of two management bodies of LRT. Irrespective of the fact that LRT Council *in principle* cannot deliver unbiased judgement on LRT costs, the law also provides LRT Council with very limited functions related to *financial control* of LRT operations. Such function is mostly performed by LRT Council through control of implementation of annual estimates of income and expenditure. As far, as financial matters of LRT are concerned the Law on LRT renders LRT Council with the following competences, i.e. the Council:

- “establish an Administrative Commission for the consideration of economic and financial activities of the LRT”¹⁰² (to deal with issues of daily operations)¹⁰³;
- “approve annual estimates of income and expenditure submitted by the LRT administration and reports on their implementation”¹⁰⁴;
- “every year, <... > shall publish an annual report on the activities of the Council. This report shall contain reports on the implementation of income and expenditure estimates according to the sources of financing specified in Article 15(1) of the Law on [LRT]. The report must contain”:
- “detailed data on the number of sources of funding”;

¹⁰² Art. 10(1)(11) of Law on LRT.

¹⁰³ As aforementioned, there is no Administrative Commission being established by the LRT Council under the Amendment to the Law on LRT. Yet, Art. 11(1)(3) newly provides that LRT Council shall establish permanent committees on Audit and Risk Management, Procurement and Investment Policy and Content, appoint the chairmen of these committees from among the members of the Council and approve committee members and committee regulations.

¹⁰⁴ Art. 10(1)(7) of Law on LRT.

- “the total revenue generated by the provision of services other than services of a public nature”;
- “specified costs related to the provision of non-public services”
- “Where LRT resources are used for both public and non-public services, expenditure must be allocated accordingly as the difference between the total costs of the enterprise and the costs of rendering all non-public services.”¹⁰⁵ (in this case, the content of the LRT Council activity report is discussed, not the requirement to separate financial accounting of LRT).

Limited nature of financial control becomes clear having analysed 2018 financial and activity reports prepared by LRT. As can be seen from the content of such reports, both of such reports provide limited information on the revenues of LRT's commercial activities and says almost nothing about separation of costs by individual types of activities (e.g. commercial and non-commercial).

IV. LEGAL REGULATION OF LRT OPERATIONS UNDER THE NEW LAW ON LRT

IV.1 Activities of LRT related to the broadcasting of radio and television programmes

The new Law on LRT shall not introduce any major changes on the mission entrusted on LRT or control mechanism, which could ensure that LRT would keep its activity within the boundaries of special mission entrusted by the law. Management of LRT shall remain to be entrusted on two bodies of LRT – General Director and LRT Council¹⁰⁶. Compliance with the mission entrusted by the law shall be ensured via self-control mechanism, which shall remain to be exercised by the internal management body of LRT – LRT Council. In other words, LRT shall be left with the sole discretion to interpret scope of its own mission, which is formulated in the new Law on LRT mostly by the very broad principles and values.

IV.2 LRT's activities in online media segment

The new Law on LRT introduced new regulation on LRT operations in online platform, which mostly appears to be extension of current regulation applied with respect to TV and radio programmes (except for the requirements, which cannot be applied to online media by their nature). The new law shall also extend prohibition of advertising to online portals operated by LRT and shall leave control of compliance with all statutory requirements established in the new Law on LRT to LRT itself.

Importantly, the new law did not *oblige* LRT to operate online portals, neither determined the number or nature of such portals. Absence of such obligation generally means that qualitative requirements applied to online portals cannot be perceived as properly defined SGEI mission entrusted on LRT.

IV.3 Sources of LRT income

The new Law on LRT shall retain the same principles of financing of LRT operations, which were established in the current Law on LRT. Art. 19 of the new Law on LRT stipulate the same list of income, which may be generated by LRT, as per previous version of the law, except for the change in proportion of national tax income allocated to LRT from the State budget.

Yet, the new law modified general prohibition of advertising imposed on LRT by expanding exemptions from such prohibitions. Since 01-01-2021 there shall be three major changes with respect to provision of advertising services:

- The new law shall *introduce* general prohibition of advertising in online media platform (previously prohibition applied only with respect to advertising on radio and television programmes), which *at the first sight* suggest restriction of LRT operations in online advertising market. Yet, such restriction comes with wide exceptions, which shall enable LRT to proceed with its previous business practice (see below);

¹⁰⁵ Art. 10(6) of Law on LRT.

¹⁰⁶ Art. 9 of the new Law on LRT.

- As previously, LRT shall be entitled to provide advertising services and entitle sponsorship of programmes broadcasted in radio and television programmes or content disseminated on online news platform www.lrt.lt (including provision of information on such sponsorship), when LRT must comply with “contractual commitments” related to acquisition or sale of broadcasting rights to “*sport, cultural or other events important for society*”. Yet, the new law eliminated from the law condition that such “*sport, cultural or other events important for society*” must be “*international*” and made it specific that conditions of such prohibition shall be established by – LRT Council, which play the role of shareholder in LRT¹⁰⁷. Respectively, the new Law on LRT expanded the scope of LRT intervention into commercial market of advertising services and, simultaneously, gave LRT the exclusive right to control the scope of such intervention¹⁰⁸.
- As previously, LRT shall be entitled to broadcast “*cultural, social or educational information*”¹⁰⁹ which may be disseminated at certain fee or free of charge. The notion of “*cultural, social or educational*” information is established in the very broad terms as any information directed at promotion of “*cultural, sporting, social and/or educational activities or initiatives for such activities*”¹¹⁰. Yet, the law newly established that in broadcasts of such information LRT is entitled to indicate names and logos of sponsors of respective events and information (which opened new source of income for LRT).

Admittedly, the new law also appointed external party – *Lietuvos radijo ir televizijos komisija* – to control compliance of LRT with restrictions of advertising imposed by the new Law on LRT. Yet competence to *determine what* is considered as information falling within the notion of “*cultural, social or educational information*” is left by the law to the internal body of LRT – LRT Council, which implements the rights of shareholders within LRT¹¹¹. In other words, the new law shall leave LRT itself with the sole discretion to decide, what is considered as “*cultural, social or educational information*” and no effective mechanism to control compliance with prohibition of advertising established in the law, since *Lietuvos radijo ir televizijos komisija* shall be called to decide on infringements of prohibition of advertising conducted by LRT interpreting notions of “*cultural, social and educational information*” in the manner determined by the only potential infringer of such law – LRT.

IV.4 Control of LRT expenses and conditions of services provided by LRT

The new law shall not (i) introduce independent external control of costs incurred by LRT or prices charged by LRT for its services, (ii) neither the law shall impose obligation to separate accounts of commercial and non-commercial services enabling to monitor financial performance of LRT in each segment. Management bodies of LRT (General Director and LRT Council) shall retain exclusive discretion to decide, whether costs incurred by LRT were justifiable for the performance of mission entrusted on LRT and reasonable. In general, such authority to control LRT expenses shall be vested to LRT Council, which appears to be in a direct conflict of interests.

On the one hand LRT Council is responsible for the overall performance of LRT, quality of content, LRT position in the market, on the other hand, according to the new law LRT Council shall remain the sole authority to control that LRT expenses in the market for the acquisition of content or labour or revenue generated from the sale of advertising services would correspond to market terms. In the face of such conflict of interests proper control of expenses incurred by LRT, operation of LRT on market terms in provision of advertising services and avoidance of other distortions of competition is impossible. Furthermore, LRT Council is not accountable to anyone, which could motivate the Council to exercise effective control on LRT.

Indeed, as suggested by Art.10(12) and Art. 11(6) of the new Law on LRT, the Council must report to:

- Society. In this regard the law shall newly oblige LRT Council to conduct *self-assessment* of its activities each year. Every year such self-assessment exercise must be assisted by

¹⁰⁷ Art. 5(1) of the new Law on LRT.

¹⁰⁸ See Art. 6(1) and 7 of new Law on LRT.

¹⁰⁹ Art. 6(1) of new Law on LRT.

¹¹⁰ Art. 6(3) of new Law on LRT.

¹¹¹ Art. 6(3) of new Law on LRT.

independent external experts (without specifying the role or nature of such experts). Yet, the law is silent, whether such self-assessment shall need to be published to the society and does not provide any safeguards to ensure that self-assessment would also reflect critical remarks on operations of LRT Council.

- **Parliament.** In this regard, principles of such reporting remains the same as in the current legislation: (i) by the 1st July of each year the Council must prepare annual report on LRT activities; (ii) the report must include report on income and expenses of LRT; (iii) the report must specify details on sources of LRT income by specifically indicating amount of income received from activities of non-public nature and expenses used to generate such income; (iv) in case certain assets are used in operations of public and non-public nature, expenses must be allocated "*as the difference between the total costs of the enterprise and the costs of rendering all non-public services*"; and, finally, (v) Chairman of the Council must report on LRT activity to the Parliament on annual basis¹¹².

Yet, such reporting obligation of LRT Council should not be considered as effective tool to control decisions of LRT Council with regards to expenses incurred by LRT. There are at least two reasons for that. *Firstly*, obligation to separate accounts is established only as a requirement for report prepared by LRT Council, which does not translate into any specific accounting obligations imposed on LRT. This is manifestly seen from 2018 LRT financial report, which does not separate financial accounts of commercial and non-commercial operations and does not provide any clarity on the allocation of costs incurred by LRT in provision of separate services (even though the same requirement for the content of annual report of LRT is established in the current version of Law on LRT). *Secondly*, even though LRT Council must report to the Parliament on the annual basis, approval of such report by the Parliament is not required by the law and failure to approve annual report does not constitute basis for resignation of the Council or any of its members¹¹³.

In this regard, it is worth mentioning that the new law shall introduce position of internal auditor of LRT, which should monitor that LRT activity and costs would be effective, while expenses – reasonable. Yet, internal auditor cannot ensure full and independent control of LRT activity, since internal auditor appears to have internal position within LRT (meaning that it is not an independent institution), internal auditor shall be elected by LRT Council and accountable thereto (meaning that LRT internal auditor in principle cannot properly ensure control of decisions made by LRT Council) and internal auditor does not have a power of adoption of binding decisions on any organs of LRT¹¹⁴.

In this respect, it is rather clear that having entitled LRT to fixed proportion of national tax income the new law did not solve the problem of proper control of LRT costs, i.e. that operation of LRT in acquisition or sale markets would comply with market terms.

e) To your knowledge, when was the alleged aid granted?

Operation of LRT was always dependent on the financing from State budget. Yet, financing model, which is subject to this complaint has been introduced since 01-01-2015. According to the established model, the budget of LRT is approved by the law every year on the basis of tax revenues of the State projected in the respective year. The Law on LRT does not stipulate any time-limitation on the validity of financing mechanism stipulated in the law.

The new Law on LRT shall change the portion of national tax income allocated to LRT from 01-01-2021. Yet, as previously specific amount of financing allocated to LRT shall be approved by the Parliament each year on the basis of tax revenues projected in the respective year.

¹¹² See Art. 11(6) of the new Law on LRT.

¹¹³ See Art. 10 of the new Law on LRT.

¹¹⁴ See Art. 17 of new Law on LRT.

f) Please select one of the following options:

- According to my knowledge, the State aid was not notified to the Commission.
- According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

- According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

Lithuania published information on financing allocated to LRT in state aid transparency website suggesting that state aid provided to LRT is compatible based on Art. 53 of GBER (case No. SA.44185¹¹⁵). Yet, it is rather obvious that Art. 53 of GBER, which is directed at culture and conservation of cultural heritage, cannot justify provision of state aid for public service broadcaster – LRT (for more information see Section 8 of this Complaint). Hence, Lithuania needed to notify aid to the Commission and failed to do that. Respectively, this claim concerns provision of *unlawful* aid.

- According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

Financing to LRT's operations (which, *inter alia*, is used to finance LRT activities in online media segment) is provided by the State directly from the State budget, which is annually approved by Lithuanian Parliament. State budget is clearly a part of public resources, while decisions of the Parliament are clearly attributed to the State¹¹⁶. Respectively, both such elements of the notion of state aid are present.

¹¹⁵ Annex No. 9 Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, SA.44185 (2016/X).

¹¹⁶ Similar conclusions are made in multiple Commission decisions, see e.g. Commission Decision of 20 December 2011 on the State aid C 85/01 on ad hoc measures implemented by Portugal in favour of RTP, 2012/365/EU, p. 107.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

There are number of companies operating in the media business and competing with LRT for audience and advertising income. Yet, no other market participant is entitled to financing directly from the State budget. In this respect, it is rather clear that the measure favours only LRT and, thus, should be considered *selective* within the meaning of Article 107 (1) TFEU.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

In the sense of Art. 107(1) of TFEU presence of economic advantage is determined considering whether the financial situation of an undertaking improved as a result of State intervention on terms differing from normal market conditions¹¹⁷. In this respect, presence of economic advantage rendered to LRT by financing from the State budget shall exist provided that financial situation of LRT improved having received entitlement to an annual subsidy from the State budget, in the 2015-2020 period ranging from EUR 29 million to EUR 46 million.

The answer to such a question seems to be straightforward. Having received entitlement to subsidies from the State budget, LRT may cover all its operation expenses from such subsidies and does not face any business risk of its operations. In this respect, economic situation of LRT has clearly improved compared to the situation before the allocation of respective appropriations.

In this context, it is worth mentioning that Lithuania cannot rule out presence of economic advantage claiming the alleged compliance with *Altmark*¹¹⁸ criteria as measures applied in Lithuania clearly do not meet them. Neither of such requirements are complied by the changes introduced by the new Law on LRT. A full analysis of *Altmark* criteria is provided in Section 8 of this Complaint.

Yet, at this point, it is sufficient to mention that public service broadcasting mission (which could constitute alleged SGEI) has never been entrusted to LRT via competitive procedure, which would enable determination of effective costs of provision of such service. Moreover, payments to LRT are not related to any cost elements at all. Since *Altmark* does not presuppose a situation, where costs of provision of SGEI would not be entirely assessed in determining the amount of compensation paid for the provision of SGEI, *Altmark* cannot rule out the presence of economic advantage to LRT.

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

For the purposes of Article 107(1) TFEU, a grant of economic advantage must *distort competition*.

State measures distort competition when they improve the competitive position of the beneficiary compared to competing entities. In other words, distortion of competition will occur when the State guarantees a financial advantage to an operator operating on a liberalised market.¹¹⁹

¹¹⁷ Items 66-67 of Commission Guidelines on the Notion of State aid.

¹¹⁸ CJEU judgement of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, and *Oberbundesanwalt beim Bundesverwaltungsgericht*, C-280/00, EU:C:2003:415 (*Altmark*).

¹¹⁹ CJEU judgement of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, C-730/79, EU:C:1980:209, p. 11; CJEU judgement of 15 June 2000, *Alzetta Mauro and others v Commission of the European Communities*, joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, EU:T:2000:151, p. 80.

Even though the finding of an *impact on competition* may be derived from the mere fact that economic advantage has been given in the liberalised market (which appears to be the case),¹²⁰ it is appropriate to consider and discuss in particular, how competition in Lithuanian media market has been distorted having allocated financing to LRT from the State budget without introducing any mechanism of control on the scope and content of LRT operations and LRT financial accountability.

According to the information provided on the website of DG Competition, there are 40 decisions¹²¹ taken by the European Commission in which the Commission considered a grant of State aid to public service broadcasters. In the vast majority of those decisions, the existence of “effect on competition” (as well as the presence of “state aid”) was established. The presence of such an effect on competition has been accepted irrespective of the fact that public service broadcasters have to forego advertising revenue or significantly limit the volume of such revenue in exchange to receipt of funding of their operations from the sources controlled by the State. In decisions adopted by the European Commission, the effect on competition was linked to:

- Competition between commercial and public service broadcaster s *for the audience* on which the revenues of commercial broadcasters on free-to-air, pay-TV or online advertising markets depend;
- Competition for the advertising revenue;
- Competition in the upstream or downstream market for the acquisition or sale of content.

In this regard, below we provide information on the impact on competition in each of these instances.

V. PRACTICE OF THE EUROPEAN COMMISSION

V.1 Competition for the audience (listeners / viewers of radio and television programmes and visitors of online media websites)

In its decisions related to the financing of public service broadcasters, the European Commission notes that public service broadcasters continue to compete with private operators for *audience* irrespective of the fact that having received public financing public service broadcasters reduce their presence or entirely leave advertising market, which seems to be a perfectly accurate assessment.

Being able to attract consumers (viewers / listeners / visitors) by offering *free content*, public service broadcasters have direct impact on private operators' business: (i) operation of public service broadcasters reduce revenues from the provision of advertising services (since part of the audience turns to *free content* offered by public service broadcasters, the value of services provided by private market operators is diminished; clients value advertising services less and turn to alternative more effective advertising services; in case clients purchase advertising services by selling GRPs (gross rating points) and (or) TRPs (target rating points), which directly relate price of advertising services with generated viewer's audience of the free-to-air channel, competition for audience from LRT directly reduce income received by commercial operators); and (ii) free content offered by public service broadcasters impair possibility of private market operators to sell paid services (since good quality ad-free content delivered by public service broadcasters duplicates value proposal offered by private market operators for the paid services). The European Commission's practice also points out that this distortion of competition occurs both concerning broadcasting services and the functioning of public service broadcasters on online platforms. The essence of this distortion of competition was well covered by the European Commission in its 2010 decision, which concerned financing Dutch public service broadcasters:¹²²

“98. The annual funding of the public service broadcasters provides for a financial advantage which strengthens their position towards private operators which offer broadcasting services and which need to finance their activities through commercial revenues. Both public and

¹²⁰ Commission Decision of 20 December 2011 on State aid No C 85/01 on one-off measures taken by Portugal in respect of RTP, p. 30.

¹²¹ Interactive Access: <https://ec.europa.eu/competition/sectors/media/decisions_psb.pdf>.

¹²² Commission Decision of 26 January 2010 on State aid No E 5/2005 annual financing of Dutch public service broadcasters.

private operators compete for audience. The audience share being the determining factor for advertising prices, an increase of the audience share of publicly financed broadcasters to the detriment of private competitors has a direct effect on the advertising revenues of private operators.

99. Finally, and more particularly as regards new audiovisual activities, the public service broadcasters compete with private operators, including print media operators, offering similar online services. Where public service broadcasters offer online services which are similar or identical to online services offered by private operators, it is obvious that the public funding of such activities may have an impact on the business model of private operators either through the competition of pay-services offered by private operators with services offered by public service broadcasters for free or through the competition for users which ultimately determine the advertising revenues of private operators.

100. In view of these considerations, the Commission is of the opinion that the State aid measures in favour of the public service broadcasters are liable to distort competition and trade within the European Union.”

In essence, analogous conclusions on competition between private and public service broadcaster s for the *audience* were also presented by the European Commission, e.g. (i) in the case of German public service broadcasters adopted in the 2007 Decision;¹²³ (ii) in the case of Portuguese public service broadcaster RTP, adopted in the 2011 Decision¹²⁴; (iii) in the 2011 decision on Danish radio channel FM4;¹²⁵ or (iv) in the France Televisions case, adopted in 2010¹²⁶.

The European Commission's practice also often refers to the impact on competition in the online media market. E.g. (i) in the 2008 Irish case on RTE and TG4, which dealt with the issue of free-to-air news platforms developed by public service broadcasters¹²⁷, establishing the existence of an impact on competition in this area of activity¹²⁸; or (ii) in the case of German public service broadcasters adopted in the 2007 decision¹²⁹.

V.2 Competition for advertising revenue

Financing of public service broadcasters from the State budget is usually accompanied by a restriction on commercial advertising. On the other hand, in many cases considered by the European Commission, such restriction often has exceptions that enable advertising services to continue to be sold, albeit to a limited extent. In such situations, the European Commission tends to recognise that effects on competition also occur in the market for advertising services.

The presence of such an effect on competition was examined, for example, in the European Commission's 2010 decision in France Televisions.¹³⁰ In the present case, the beneficiary of State aid, France Televisions, argued that once the public service broadcaster had withdrawn from the television advertising market, competition would no longer be affected.¹³¹ However, this position has been rejected by the European Commission, pointing out, *inter alia*, that France Televisions will

¹²³ Commission Decision of 24 April 2007 in Case E 3/2005 on the financing of public service broadcasters in Germany, p. 184.

¹²⁴ Commission Decision of 20 December 2011 on State aid No C 85/01 on ad hoc measures implemented by Portugal in favour of RTP, p. 30.

¹²⁵ Commission Decision of 23 March 2011 on State aid No SA.32019 Danish radio channel FM4, p. 58-59.

¹²⁶ Commission Decision of 20 July 2010 on State Aid C 27/09 Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions.

¹²⁷ Commission Decision of 27 February 2008 in Case E 4/2005 concerning Irish State funding for Radio Teilifís Éireann (RTÉ) and Teilifís na Gaeilge (TG4), p. 10.

¹²⁸ *Ibid.*, p. 62.

¹²⁹ Commission Decision of 24 April 2007 in Case E 3/2005 on the financing of public service broadcasters in Germany, p. 189.

¹³⁰ Commission Decision of 20 July 2010 on State Aid C 27/09 Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions.

¹³¹ Commission Decision of 20 July 2010 on State Aid C 27/09 Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions, p. 53.

continue to play an active role in the French television commercial advertising market, albeit with slot restrictions¹³².

In this regard, Commission practice also suggests that effect on competition may be declared irrespective of the fact that market share of national broadcaster on advertising services market is low. E.g. in France Televisions case Commission accepted presence of effect on competition irrespective of the fact that market share of national broadcaster amounted to 3,3% of the market, while market share of major competitors amounted to 50% and 20%.

“Even if the competitors of France Télévisions will have benefited to the full from the almost total withdrawal of France Télévisions from the advertising market brought about by the reform, France Télévisions will nevertheless retain a presence. In fact, assuming constant volumes and market share for the competitors compared with 2007, on the basis of the estimates of advertising revenue and sponsorships of France Télévisions provided by the French authorities, France Télévisions would still hold 3,3 % of the market in 2012, compared with over 50 % and about 20 % for TF1 and M6 respectively.

France Télévisions will be able to achieve an audience share which it could not envisage in the absence of the budget allocation in question, which is liable to have an impact on the audience of the other broadcasters and, therefore, on their commercial activities, thereby distorting the conditions of competition. “¹³³

V.3 Competition in the markets for the purchase and sale of content

In the European Commission's practice, effects on competition are often also determined in the upstream or downstream market. In particular, the market for the *acquisition* or *sale* of content. In this respect, it is assumed that the prohibition on advertising does not exclude public service broadcasters from the market by competing with commercial broadcasters / media companies for the acquisition of content (such as films or sports events) or by selling their own intellectual property rights to content to third parties.

The impact on competition in such markets was found, for example, (i) in the 2011 decision of the European Commission in the restructuring case of the Danish public service broadcaster TV2¹³⁴; (ii) in the 2011 decision in the case of the Danish radio channel FM4¹³⁵; (iii) in the 2010 decision in the French France Televisions¹³⁶ case; or (iv) in the 2007 decision in the case of German public service broadcasters¹³⁷, in which the European Commission fully disclosed the substance of such distortion of competition:

“185. <... > as regards the acquisition of broadcasting rights and provision of content (sale of broadcasting and other rights), the aid granted to public service broadcasters may have an adverse effect on competition given that private operators compete with public service broadcasters for rights (e.g. film or sports rights) which the first need to entirely refinance through commercial revenues while the latter are publicly financed without the need to ensure the refinancing of the rights acquired. Similarly, aid granted to public service broadcasters may allow them to offer more attractive and high quality content compared to content produced by private operators, thus potentially affecting the private operators revenues generated through the sale of such content/broadcasting rights.”¹³⁸

¹³² *Ibid.*, p. 79.

¹³³ Commission Decision of 20 July 2010 on State Aid C 27/09 Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions, p. 79-80.

¹³⁴ Commission Decision of 20 April 2011 concerning State aid C 19/09 which Denmark intends to implement regarding the restructuring of TV2 Danmark A/S, p. 131-132.

¹³⁵ Commission Decision of 23 March 2011 in Case No SA.32019 concerning the Danish radio channel FM4, p. 62.

¹³⁶ Commission Decision of 20 July 2010 on State Aid C 27/09 Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions, p. 80.

¹³⁷ Commission Decision of 24 April 2007 in Case E 3/2005 on the financing of public service broadcasters in Germany, p. 185.

¹³⁸ Commission Decision of 24 April 2007 in Case E 3/2005 on the financing of public service broadcasters in Germany, p. 185.

VI. ACTUAL EFFECT ON COMPETITION IN CASE OF LITHUANIAN STATE AID SCHEME

Taking into account forms of distortion of competition found in the European Commission's case-law, it is rather clear that the “effect on competition” required by Art. 107(1) of TFEU is present in the situation considered in this Complaint. This conclusion is confirmed by multiple arguments/circumstances.

One, as noted above, presence of an “effect on competition” could be declared merely having established that financial advantage has been conferred on an entity operating on a liberalised market. In the Republic of Lithuania, there are no restrictions to enter or operate in the markets for the provision of television or radio broadcasting or online media services. In all markets where LRT operates, private market participants operate alongside. Accordingly, such markets are liberalized, while financial advantage provided to LRT *ipso facto* enables to conclude the presence of “effect on competition”, which is required for the application of Art. 107(1) TFEU.

Two, LRT has no legal obligation to separate its financial accounts for its fully commercial services and services falling within the scope of its public service broadcasting mission. All revenues and expenditures are accounted for in the general financial statements of LRT. At the same time, the legislation does not impose any obligation on LRT to use subsidies received from the State budget only to fulfilment of its public service broadcasting mission, meaning that LRT is able to direct such subsidies to finance its activities in online news portal channel or any other business without any accountability and restrictions. Lack of such safeguards means that financing received by LRT primarily for the performance of special mission in broadcasting of radio and television programmes may be freely channelled to finance operations in the online news portal or any other means of business, thus creating distortions of competition in online media market or other markets as well. As noted above, any decisions of such nature are being taken unilaterally by LRT. Such lack of financial control has not been remedied by the new Law on LRT, which shall come into force since 01-01-2021.

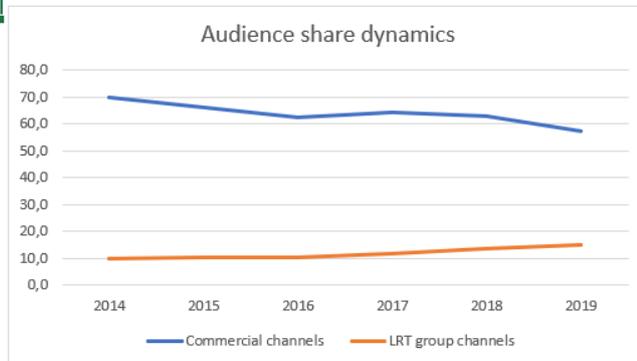
Such a problem of distortion of competition is additionally increased by the fact that financing of LRT's activities is tied solely to financial indicators of the State, i.e. necessity or justification of LRT costs does not have any impact on the amount of funding received by LRT. In the context of growing tax income of the State such financing model creates a surplus of LRT income, which enables and induces LRT to channel such financial surplus to make business-wise irrational decision in television and radio segments and new markets, such as online media channel. E.g. LRT may pay irrational salaries to employees or producers, which cannot be normally paid by commercial operators being dependent on advertising revenue. Naturally, having the opportunity to invest more in its operations than private market participants, LRT has the opportunity to offer consumers with high quality ad-free content on any platform, which naturally crowds-out private market participants from the market.

Three, even though LRT operates in the online advertising market only to a limited extent, LRT is still competing with private market operators for *an audience*. From a general point of view, LRT competes for *an audience* with private (i) television broadcasters, (ii) radio stations and (iii) internet portals.

As suggested by the market share data of TV market (Annex No. 28) within the period of 2014-2019 audience share of LRT has been steadily increasing at the expense of audience share of commercial channels. LRT group increase its audience share by 4,9%, which is quite similar to the total market share of two programs operated by TV3 – “TV8” and TV6” (for more extensive data see Annex No. 28). It is important to mention that LRT managed to increase its audience irrespective of the fact that TV market was generally losing its audience to alternative platforms for video content, such as youtube.com.

Audience share ALL 4+

		2014	2015	2016	2017	2018	2019
Market	Total	100	100	100	100	100	100
National	LRT Televizija	8,8	9,2	9,0	10,5	12,2	13,1
National	LRT Plius	1,1	1,1	1,2	1,1	1,5	1,8
Commercial	TV3 lt	17,2	16,2	15,7	16,8	17,8	16,5
Commercial	TV6	4,4	4,3	3,6	3,2	3,1	3,1
Commercial	TV8	2,7	2,6	3,0	2,9	2,8	3,0
	Commercial channels	70,0	66,2	62,6	64,5	63,0	57,5
	LRT group channels	9,9	10,3	10,2	11,7	13,7	14,8



The same competition takes part in respect of operation of online news portals. LRT's operational objectives in the online news portal market are very ambitious. This is evidenced by the following analysis of LRT's public and official statements:

- LRT activity report of 2018¹³⁹ specifies the objectives of LRT activities related to the development of the news portal LRT.lt. As can be seen from the goals indicated below, LRT established a target to increase visits to its news portal by 306% in 4 years (2018-2022) and to double the amount of time users spend on the news portal.

Strategic objectives and indicators	2018 result	2019 goal	2022 goal

<...>

S4 Introduce new technologies, improve quality of content creation and dissemination, increase audience reach

Number of unique visitors of news portal LRT.LT	440 000	>=550 000	>=1 350 000
Average time spent by unique visitor on the news portal	00:14	>=00:18	>=00:30

Translation from Lithuanian

- Moreover, LRT activity report of 2018 states that online portal operated by LRT should become the leader of online media:

“In line with the practice of European public broadcasters, we are creating LRT.LT as a leader in the online media, distinguished by the way and quality of information is expressed. As a

¹³⁹ Annex No. 13 LRT activity report of 2018, *LRT 2018 m. veiklos ataskaita*, p. 59.

*strong, reliable and modern source of news, providing a wide range of content for the public broadcaster.*¹⁴⁰

Competition for the audience is also evidenced by the sociological research data published on the website of LRT, in the context whereof LRT evaluates its activities.¹⁴¹ As evidenced by the data of the study commissioned by LRT in May 2019, LRT benchmarks the quality of its activities in the context of other media, taking into account all segments of activities (radio, television or online news portals). Such an assessment of its activities makes sense only by recognising that LRT competes in its activities for the same audience that private market participants (including online news portals) are trying to attract, *inter alia*, for leadership in this market:

Features assigned to the media groups											
TELL US ABOUT EACH OF THE FOLLOWING FEATURES - PLEASE ASSIGN MEDIA GROUPS TO WHICH THEY ARE MOST SUITABLE FOR. (%)											
All respondents N=1000											
	EFFICIENCY		RELIABILITY		OBJECTIVITY		AUDIENCE EDUCATION		MODERNITY		FOSTERING CULTURE
LRT group	46	LRT group	45	LRT group	44	LRT group	62	LNK group	35	LRT group	72
LNK group	40	TV3 group	34	TV3 group	34	LNK group	30	LRT group	33	LNK group	20
TV3 group	39	LNK group	33	LNK group	29	TV3 group	29	TV3 group	33	TV3 group	15
Delfi group	39	Lietuvos rytas group	23	Lietuvos rytas group	25	Lietuvos rytas group	22	Delfi group	27	Lietuvos rytas group	15
15 min group	31	Delfi group	21	Delfi group	20	Delfi group	11	Lietuvos rytas group	25	M1 group	6
Lietuvos rytas group	31	15 min group	19	15 min group	16	15 min group	10	15 min group	24	Delfi group	5
M1 group	15	M1 group	9	M1 group	9	M1 group	9	M1 group	18	15 min group	3
None of them	5	None of them	10	None of them	10	None of them	5	None of them	7	None of them	5
Do not know	5	Do not know	7	Do not know	9	Do not know	8	Do not know	13	Do not know	9

*Translation from Lithuanian*¹⁴²

The above data confirm that LRT appears to be a direct competitor to all media market participants in the competition for *audience* reach, including in competition with online news portals.

Four, by increasing the reach of its *audience*, LRT has a significant impact on the further ability of private market operators to compete with LRT for the audience and, more generally, to operate on the market.

As mentioned above, competition in the media market primarily takes part of the audience, which then subsequently may be monetised and converted into a revenue stream. For example, TV3¹⁴³ runs its business in Lithuania on three different platforms: television, radio and online. Some of its products are provided to the audience free of charge (e.g. free-to-air television channel “TV3” “TV8” and “TV6”), where TV3 generate revenue from showing ads to the *audience* watching free to air television (i.e. from provision of advertising services). It should be mentioned that the vast majority of commercial advertising sales is performed by selling GRPs (gross rating points) and (or) TRPs (target rating points). This means that money actually paid by the client is directly dependant on the generated viewer’s audience of the free-to-air channel. TV3 also runs online access video on demand platform “TV3 Play”, where TV3 generate revenue commercialising audience: either from subscription fees

¹⁴⁰ Original citation in Lithuanian: “Atsižvelgdami į Europos visuomeninių transliuotojų praktiką, LRT.LT kuriame kaip internetinės žiniasklaidos lyderį, išsiskiriančią informacijos raiškos būdais ir kokybe. Kaip stiprų, patikimą ir modernų naujienų šaltinį, suteikiantį platų visuomeninio transliuotojo turinį.” Annex No. 13 LRT activity report of 2018, LRT 2018 m. veiklos ataskaita, p. 49.

¹⁴¹ Interactive Access: <<https://apie.lrt.lt/apie-lrt/sociologiniai-tyrimai>>.

¹⁴² See the original statistical chart at Annex No. 21 Lithuanian Population Survey on LRT, May 2019, 2019 m. gegužės Lietuvos gyventojų apklausa apie LRT.

¹⁴³ More about TV3 operations can be found on the website of TV3 group: <https://tv3group.eu/brands-products/#tv>

paid by the audience, either from customers of advertising services aiming to reach that audience with their commercials.

The same principle applies to running business on online news platforms. As evidenced by the examples of Delfi.lt and 15min.lt online news portals, commercialisation of audience reach takes part (i) through the development of pay-to-access news portals that provide ad-free better-quality content; or (ii) by showing audience ads ordered by advertisers.

Funding of LRT's activities from State funds reduces possibility of private market participants to generate income in both of such segments of income.

By taking over the *audience* of private market participants, LRT primarily reduces attractiveness of the advertising services they offer and, accordingly, the revenues generated on this market. In turn, the loss of revenue from advertising services continues to reduce the ability of television, radio or online portals to produce high-quality and user-friendly content, i.e. compete for the audience and subsequently turn such audience into revenue stream.

At the same time, provision of content comparable to the one offered by commercial operators significantly affects their possibility to develop and expand their paid access (subscription fee) based business, since premium quality contents become available free of charge to everyone. Such problem is particularly acute for online business, which struggled for several years to become less dependent on advertising revenue and persuade their audience to pay subscription fees.

In strategy documents LRT officially declared strategy to publish good quality ad-free content on its news portal:

“Online Advertising

The Law on LRT allows advertising on the portal, but we broadcast it minimally. The direction of the updated portal will also remain the same – clean and advertising-free content.”¹⁴⁴

Yet, paid access services offered by private operators, e.g. “Delfi Plus” or “15min MAX”, also have the same objective. Commercial operators present these services to customers as an opportunity to access high-quality news content without any advertising.

Taking into account the overlap of such objectives of LRT (as distributor of free content) and commercial operators (willing to sell paid access content) it becomes quite clear that by offering consumers high-quality content without advertising, news portal LRT.lt denies private market operators the ability to generate revenue from the provision of paid access services they create. Users can meet their needs by visiting the public service broadcaster 's online news portal totally free of charge.

In this way, the State funding to LRT has an impact on competition on all media markets it operates irrespective of the fact that provision of advertising services is provided at minimum scope.

Five, as noted above in Section 6(d), the Law on LRT imposes restrictions on LRT to participate in the market for the provision of advertising services. Yet, provision of such services is not prohibited – the same advertising services are provided under the title of (i) cultural, social or educational information; (ii) sponsorship reports for cultural and sporting events and/or their broadcasts; and (iii) necessity to fulfil contractual obligations against sellers of audiovisual content.

Extent of such operations is perfectly illustrated by the open data published by Lithuanian public procurement office stating that within 2015-2020 period LRT entered into public procurement contracts in the value of EUR 3,4 million, which was even higher than analogous sales of commercial broadcaster - UAB “Laisvas ir nepriklausomas kanalas”. Participation in advertising market is also

¹⁴⁴ Original citation in Lithuanian: “Reklama internete. LRT įstatymas leidžia reklamą naujienų portale LRT.lt, tačiau jos transliuojame minimaliai. Atnaujinto portalo kryptis taip pat išliks tokia pati – švarus ir reklamos neapkrautas turinys.” Annex No. 13 LRT activity report of 2018, *LRT 2018 m. veiklos ataskaita*.

confirmed by 2018 LRT Financial report¹⁴⁵, which suggest that commercial income of LRT amounted to EUR 2,838 million¹⁴⁶ and major part of such income (EUR 2,0198 million) was generated by LRT from broadcasting of “sponsorship reports” and cultural, social and political information.

In this context it should be noted that there are no material differences between “advertising” and provision of “information” on sponsorship of events or “information” on cultural, social and political events. Such “information” is part of the same advertising service, which is normally sold by commercial broadcasters. Since LRT is financed from State budget and does not need to cover from advertising revenues costs of its operations, in such market LRT may offer terms which does not correspond to the terms normally offered by commercial market operators. Respectively, LRT participation in advertising market distorts competition.

Six, the current version of Law on LRT or any other legal acts in no way restricts¹⁴⁷ LRT's ability to publish advertisements on the online news portal managed by LRT. And in fact, LRT exercised such freedom. According to the data of LRT activity report of 2018, advertising on the news portal LRT.It generated LRT revenues of EUR 83 000.¹⁴⁸ Indeed, LRT activity report of 2018 suggests that online portal aims to provide advertising services at a minimum level. However, such a declaration and the amount of revenue received in 2018 does not preclude the fact that functioning of LRT in the online advertising market creates distortions of competition in online advertising markets:

- As has been seen from the example of *France Televisions*¹⁴⁹, low engagement of national broadcasters in advertising market does not *ipso facto* eliminate effect on competition, which must be determined for the purpose of Art. 107(1) of TFEU. In this respect it should be accepted that irrespective of the stated objectives and the magnitude of the advertising revenue generated, online news portal LRT.It does publish advertising and because of the placement of that advertising LRT.It compete with private news portals on the advertising services market, thus, causing distortions of competition.
- Publicly declared amount of income received on such a portal should be perceived with caution and does not necessarily represent the actual value of services and extent of LRT operations in online advertising market. In this case, it should be recalled that LRT does not need to calculate and cover its operating costs, as all costs are covered by the State budget. For this reason, the price of advertising services offered by LRT does not necessarily have to correspond to their market value, and LRT can sell these advertising services well below the cost price as well. In this context, it can be argued that the advertising revenue of EUR 83 000 represents only the amount for which LRT sold advertising services. However, this figure does not say anything about the market value of such services or the extent of LRT.It participation in the advertising market. In other words, this figure does not reflect the extent to which the advertising published on the LRT.It portal has resulted in a loss of revenue for private market participants.

In this context, it should also be recalled that the LRT activity report of 2018 directly recognises that LRT sells advertising services at a price lower than the market price: “*The rates charged for broadcasting this information are lower than those available on the Lithuanian advertising market. Discounts are applied to disseminate much of this information when LRT becomes an information partner or sponsor of various cultural, civic and sports projects.*”¹⁵⁰

- The LRT's declaration in the LRT activity report of 2018 that LRT is seeking to publish advertising only to a minimal extent does not mean that by significantly increasing the size of its audience reach (nearly triple the growth of the audience is expected from 2018 to 2022),

¹⁴⁵ Annex No. 24

¹⁴⁶ Page 3 of 2018 Financial Report.

¹⁴⁷ As aforementioned in the Section 6(d) of this Complaint, advertising restrictions meant to be applicable only to the television and radio programmes, will become as well applicable to the online portal under the Amendment to the Law on LRT. Yet, such restrictions will come into force only on 01.01.2021.

¹⁴⁸ Annex No. 13 LRT activity report of 2018, *LRT 2018 m. veiklos ataskaita*, p. 66.

¹⁴⁹ Commission Decision of 20 July 2010 on State Aid C 27/09 Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions, p. 79-80.

¹⁵⁰ Annex No. 13 LRT activity report of 2018, *LRT 2018 m. veiklos ataskaita*, p. 66.

LRT will not start to increase the volume of advertising services, irrespective of the fact that since 01-01-2021 general prohibition of advertising shall extend to online media as well.

In this respect, it should be recalled that according to the *current* legal regulation, LRT individually decides to what extent LRT wishes to operate in the market for online advertising services and how to determine the price of such services. And it does not seem that engagement in online advertising market shall be eliminated by general prohibition of advertising, which shall come into force with respect to LRT online business. As suggested by the example of advertising on television and radio, which was subject to the same prohibition since 2015, irrespective of general prohibition (which is subject to exceptions) LRT remains to operate in advertising market and compete with commercial operators in public procurement tenders (generating ~2 EUR of annual income in 2018).

In light of the above considerations, it must be noted that the European Commission's decision in the *France Televisions* case, adopted in 2010¹⁵¹, examined whether the effects on competition could be established when a public service broadcaster publishes advertising only to the minimum extent. From the point of view of the European Commission, the mere fact that the recipient of State aid is active in the advertising services market is sufficient to establish the existence of an impact on competition. A similar approach should therefore also be adopted in relation to the impact on competition in the online advertising market in the present case.

Seven, while receiving financing from the State budget, LRT continues to compete with private entities in *publicity* market by naturally distorting competition. An example of such competition is “political advertising”, which does not fall within the prohibition of advertising imposed on LRT. In this advertising segment, LRT acts alongside other advertisers¹⁵² by enabling advertisers to choose where to buy the air/audience they need – in the media managed by private entities or in television, radio or online news portal managed by LRT.

Eight, as already explained in Section 6(d) operation of LRT on advertising market irrespective of general prohibition of advertising could be easily illustrated by the reference to public procurement tenders, where competition between LRT and commercial operators takes place.

For example according to open data provided by Lithuanian public procurement office within the period of 2015-2020, when general prohibition of advertising was already in place, (i) LRT concluded public procurement contracts (as supplier) in the value of 3 403 743, (ii) UAB “Laisvas ir nepriklausomas kanalas” (company code 123026090) concluded contracts in the value of EUR 3 190 101, and (iii) TV3 (Complainant 2, company code 121393020) – EUR 5 377 361. Such figures *ipso facto* suggest that general prohibition of advertising stipulated in law in 2015 did not eliminate LRT from advertising services market. LRT remains in this market, yet title of advertising services provided thereby is aligned to exceptions stipulated in the Law on LRT. “Commercial nature” of such services is specifically recognized in 2018 LRT financial report.

Nine, funding of LRT from the State budget also distorts competition in the market for acquisition or sale of content. Such a distortive effect is most pronounced when it comes to the participation of LRT in the market in the purchase of television broadcasting content (e.g. rights to broadcast sports events or films). For example:

- For a decade TV3 was the sole broadcaster of Euroleague premier basketball competition, which is so important for Lithuanian population that in 2013 Lithuanian Government adopted special resolution listing such sport event as significant for Lithuanian society¹⁵³.

¹⁵¹ Commission Decision of 20 July 2010 No C 27/09 on the budget grant to be granted by the French Republic to France Télévisions, p. 80.

¹⁵² Interactive Access: <<https://www.delfi.lt/m360/naujausi-straipsniai/skaiciuojamos-ziniasklaidos-pajamos-is-politines-reklamos-tarp-daugiausiai-uzdirbusiuju-ir-lrt.d?id=81302964>>.

¹⁵³ Government of the Republic of Lithuania 3 April 2013 Resolution No. 288 “On Approval of the List of Events Significant to the Society of the Republic of Lithuania”, Lietuvos Respublikos Vyriausybės

Broadcasting of such events on TV is so important that it is subject to special requirements established in Art. 38 of the Law on Public Information¹⁵⁴, including requirement to broadcast such competition on free-to-air TV. In 2020 TV3 and LRT competed for acquisition of broadcasting rights to such sport event and LRT won that competition. TV3 is not aware of precise amount offered by LRT, yet as suggested by rumours amount offered by LRT was much higher than the one offered by TV3. Quite the same scenario takes part, when LRT competes with commercial broadcasters for the acquisition of broadcasting rights to Olympics or other basketball sport events.

- LRT competes with TV3 for the acquisition of package of audio-visual content from NBC Universal Studios and currently entered into long-term agreement. Package of programmes acquired by LRT from NBC Universal Studios include content of clear commercial nature, which is broadcasted by LRT on its TV programmes, e.g. such movies as THE LOST WORLD: JURASSIC PARK, 1997, JOHNNY ENGLISH, 2003; TED, 2012; FAST AND FURIOUS; AMERICAN REUNION, 2012; PURGE, THE: ANARCHY, 2014; DRACULA UNTOLD, 2014; BOURNE LEGACY (2012) and such TV series as CHICAGO P.D or SUITS.

Analogous impact on the upstream market of acquisition of content occurs in competition with online news portals as well. For example, online news portals publish audiovisual content acquired, *inter alia*, from producers offering similar products to both the public service broadcaster and private players. For example, in 2019-2020 “Delfi TV” acquired one of the most popular audiovisual shows in Lithuania “Dėmesio centre”. Delfi TV was forced to compete with the public service broadcaster in order to acquire this content.

In this context, it can be argued that funding granted to LRT also distorts competition in the upstream market for the acquisition of content or downstream market for the sale of content. Such distortion generally takes part since LRT is the only undertaking in the market, which ability to pay is not constrained by the considerations of possibility to recoup such investments via income from advertising or pay for access services from consumers.

Ten, State funding granted to LRT simultaneously distorts competition in the labour market, i.e. for journalists who create content for broadcasters / news portals. In this case, the point is that on the labour market journalists and other employees who produce news are paid remuneration in line with market conditions. The level of pay and other working conditions is logically linked to the revenue generated by media companies through the distribution of paid content access services or provision of advertising services. This economic logic does not apply to LRT. With the funding provided by the State, which in principle tends only to grow as the State budget revenue grows, LRT is protected from any fluctuations in income and can pay journalists rewards that exceed the benefits offered by the market, while not requiring journalists to create a value of content that would be able to attract *an audience* that news portals could later commission with income.

Such a problem became particularly acute when LRT started to strengthen its online news portal LRT.lt. By strengthening its market presence, LRT offers the best private media employees much higher wages by ensuring that such remuneration will be paid for lower performance. A large proportion of journalists agreed to such a proposal. Accordingly, state-funded LRT distorts competition in the labour market and reduces the competitiveness of private news portals.

In this case, competition is distorted mainly due to the fact that the amount of funds received by LRT from the State budget is not in any way linked to the costs incurred in performing the mission entrusted on LRT. The problem is compounded by the fact that LRT is not controlled by any regulator that can control whether the costs incurred by LRT (e.g. wages) are reasonable and in line with market conditions.

In conclusion, the above-mentioned practice of the European Commission and an overview of individual aspects of LRT financing and activities clearly confirm that providing an economic and

2013 m. balandžio 3 d. nutarimas Nr. 288 “Dėl Lietuvos Respublikos visuomenei reikšmingų įvykių sąrašo patvirtinimo“ (Žin., 2013, Nr. 38-1855)

¹⁵⁴ Law on Public Information of the Republic of Lithuania, Lietuvos Respublikos visuomenės informavimo įstatymas (Žin., 1996, Nr. 71-1706; 2006, Nr. 82-3254).

financial advantage to LRT compared to competitors not receiving the same funds has to be regarded as distorting competition by favouring LRT in the meaning of Article 107(1) TFEU.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

From the point of view of the EU state aid law, State measures *have an impact on trade between Member States* where the advantage conferred by the State strengthens the position of an economic operator receiving State aid compared to other economic operators competing at the Union level. When determining the existence of such effects, account must be taken of the following rules:

- It is not necessary to establish that the aid has an actual effect on trade between Member States, it is sufficient to establish whether the aid is likely to affect such trade.¹⁵⁵
- State aid may affect trade between Member States even if the recipient is not directly involved in cross-border trade. For example, a subsidy that retains or increases local supply may make it more difficult for operators in other Member States to enter the market¹⁵⁶. In other words, the effect on trade between Member States exists if the granting of State aid makes it more difficult for entities established in other Member States of the European Union to compete on the domestic market;
- The mere fact that the amount of State aid received is relatively small or that the beneficiary undertaking is small does not mean that trade between Member States cannot be affected;¹⁵⁷
- In determining the impact on trade, it is not necessary to define the market or to examine thoroughly the competitive position of the beneficiary and its competitors.¹⁵⁸
- When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid¹⁵⁹, even if the beneficiary undertaking is itself not involved in exporting¹⁶⁰.
- Where a Member State grants aid to undertakings operating in the service and distributive industries, the recipient undertakings need not themselves carry on their business outside the Member State for the aid to have an effect on the Community trade¹⁶¹.

In line with this case-law, the Communication from the Commission on the application of State aid rules to public service broadcasting¹⁶² (hereinafter – **Communication**) explains that funding for public service broadcasters will generally meet the criterion of the impact on trade between Member States:

¹⁵⁵ CJEU judgement of 14 January 2015, *Eventech Ltd v The Parking Adjudicator*, C-518/13, EU:C:2015:9, p. 65; CJEU judgement of 8 May 2013, *Eric Libert and Others v Gouvernement flamand (C-197/11)* and *All Projects & Developments NV and Others v Vlaamse Regering (C-203/11)*, EU:C:2013:288, p. 76; Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, 2016/C 262/01, p. 191.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*, p. 192.

¹⁵⁸ *Ibid.*, p. 193.

¹⁵⁹ See CJEU judgement of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, C-730/79, EU:C:1980:209, p. 11.

¹⁶⁰ CJEU judgement of 17 June 1999, *Kingdom of Belgium v Commission of the European Communities*, Case C-75/97, EU:C:1999:311.

¹⁶¹ CJEU judgement of 7 March 2002, *Italian Republic v Commission of the European Communities*, C-310/99, EU:C:2002:143.

¹⁶² Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01.

“State financing of public service broadcasters can also be generally considered to affect trade between Member States. As the Court of Justice has observed, ‘when aid granted by the State or through State resources strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid’¹⁶³. This is clearly the position as regards the acquisition and sale of programme rights, which often takes place at an international level. Advertising, too, in the case of public service broadcasters who are allowed to sell advertising space, has a cross-border effect, especially for homogeneous linguistic areas across national boundaries. Moreover, the ownership structure of commercial broadcasters may extend to more than one Member State. Furthermore, services provided on the internet normally have a global reach.”¹⁶⁴

As can be seen from the above quote, such effects are most often seen (i) in the markets for the acquisition or sale of content, which, by their very nature, are always international (ii) through restrictions on the ability of entities established in other Member States of the EU to operate on the national market, (iii) in terms of online content, considering that such services are available globally.

In the context of the above rules, it is sufficiently obvious that allocation of State funding to LRT has an effect on trade between the Member States of the EU in the sense of Art. 107(1) of TFEU in several respects:

- LRT buys and sells television, radio and online news content on international markets. It is regarded by the Commission as affecting the trade in multiple decisions, see e.g. Commission Decision of 2 July 2009 on State aid to TV2 Denmark¹⁶⁵, Commission Decision of 16 July 2008 Dotation en capital pour France Télévisions¹⁶⁶, etc.

Particularly it can be argued that LRT operates throughout Europe with regard to the purchase and sale of programme rights via the European Broadcasting Union, *inter alia*, participating in the Eurovision system.¹⁶⁷ It is regarded by the Commission as affecting the trade in multiple decisions, see e.g. Commission decision of 15 October 2003 on the measures implemented by Italy for RAI¹⁶⁸, Commission decision of 2 December 2009 on new tax based funding system for public broadcasting in Spain¹⁶⁹, with reference to the judgement of 8 October 2002, *Gestevisión Telecinco v Commission*¹⁷⁰, Commission decision of 28 October 2009 on Financing of ORF¹⁷¹.

- LRT appears to be in direct competition with commercial television and radio broadcasters and news portals that are active on the international broadcasting market and have an international ownership structure. The financing of LRT's activities affects the ability of Estonian capital companies Ekspress Group (which operates online portal Delfi) and Postimees Grupp (which operates online portal 15min), and Swedish capital company Bonnier Business to Business¹⁷² (which operates online portal “Verslo žinios”) and global

¹⁶³ CJEU judgement of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, C-730/79, EU:C:1980:209, p. 11; CJEU judgement of 21 March 1991, *Italian Republic v Commission of the European Communities*, C-303/88, EU:C:1991:136, p. 27; CJEU judgement of 19 September 2000, *Federal Republic of Germany v Commission of the European Communities*, C-156/98, EU:C:2000:467, p. 33.

¹⁶⁴ Art. 18 of Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01; similarly argued by the Commission in multiple decisions, see e.g. Commission Decision of 15 October 2003 on the measures implemented by Italy for RAI SpA, 2004/339/EC.

¹⁶⁵ Commission Decision of 2 July 2009 on State aid No C19/2009 - restructuring aid to TV2 Denmark A/S, p. 39.

¹⁶⁶ Commission Decision of 16 July 2008 Aide d'Etat N 279/2008 Dotation en capital pour France Télévisions, p. 31.

¹⁶⁷ Interactive Access: <<https://www.ebu.ch/about/members?country=lithuania>>.

¹⁶⁸ Commission Decision of 15 October 2003 on the measures implemented by Italy for RAI SpA, 2004/339/EC.

¹⁶⁹ Commission decision of 2 December 2009 on State aid No C38/2009 new tax-based funding system for public broadcasting in Spain, p. 21.

¹⁷⁰ EU General Court judgement of 8 October 2002, *Gestevisión Telecinco v Commission* T-299/00 (Joined Cases T-185/00, T-216/00, T-299/00, T-300/00), EU:T:2002:242.

¹⁷¹ Commission decision of 28 October 2009 on E 2/2008 – Financing of ORF, p. 120.

¹⁷² Interactive Access: <<http://www.bonnierb2b.com/>>.

asset management company Providence Equity Partners (which operates TV3) to operate on the Lithuanian market. It is regarded by the Commission as affecting the trade in multiple decisions, see e.g. Commission decision of 15 October 2003 on the measures implemented by Italy for RAI¹⁷³, Commission Decision of 22 May 2002 on BBC licence fee¹⁷⁴, Commission Decision of 20 December 2011 on financial support to restructure the accumulated debt of the public service broadcaster RTP¹⁷⁵, Commission decision of 28 October 2009 on Financing of ORF¹⁷⁶, etc.

Notably, on this regard, in the decision of 2 December 2009 on new tax based funding system for public broadcasting in Spain¹⁷⁷ even though the State contended that the measure wouldn't affect trade between Member States as beneficiary would not be active outside the country, Commission held that when State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade the latter must be regarded as affected by that aid, even if the beneficiary undertaking is itself not involved in exporting¹⁷⁸. Similarly, where a Member State grants aid to undertakings operating in the service and distribution industries, it is not necessary for the recipient undertakings themselves to carry on their business outside the Member State for the aid to have an effect on trade in the Union¹⁷⁹.

- Online portal of LRT competes for the audience located not only in Lithuania but also abroad. Such competition takes place both based on Lithuanian content (e.g. for the attention of foreign Lithuanians who are visiting parallel web portals in other languages) and based on the news in English and Russian (in order to attract the attention of audiences looking for content in these languages). It is regarded by the Commission as affecting the trade in multiple decisions, see e.g. Commission decision of 28 October 2009 on Financing of ORF¹⁸⁰.

Accordingly, the measures in question are such as to affect trade between Member States within the meaning of Article 107(1).

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

As noted in Section 6(a) of this Complaint, Lithuania considers that within the period of 2017-2020 state aid provided to LRT falls within exemption stipulated in Art. 53 of GBER and respectively published Information Notice making such aid transparent.

Disclosure of such information in the Information Notices suggests that Republic of Lithuania acknowledges that the LRT funding corresponds to all the characteristics of State aid provided for in Article 107(1) TFEU. Yet, Lithuanian authorities made wrong assumption that financing provided to LRT may be justified under Art. 53 of GBER. Respectively, provision of such state aid to LRT had to be coordinated with the Commission based on procedure provided in Article 108(3) TFEU, while failure to coordinate provision of such aid means that financing provided to LRT within 2015-2020 amounts to be illegal state aid and needs to be withdrawn from LRT.

¹⁷³ Commission Decision of 15 October 2003 on the measures implemented by Italy for RAI SpA, 2004/339/EC.

¹⁷⁴ Commission Decision of 22 May 2002 on State aid No N 631/2001 BBC licence fee.

¹⁷⁵ Commission Decision of 20 December 2011 on State aid SA.33294 (2011/NN) financial support to restructure the accumulated debt of the public service broadcaster RTP – amendment of decision NN 31/2006, p. 30.

¹⁷⁶ Commission decision of 28 October 2009 on E 2/2008 – Financing of ORF, p. 120.

¹⁷⁷ Commission decision of 2 December 2009 on State aid No C38/2009 new tax-based funding system for public broadcasting in Spain, p. 19.

¹⁷⁸ ECJ, judgement of 17 June 1999, Case C-75/97 Maribel bis/ter ECR [1999] page I-3671, paragraph 47.

¹⁷⁹ ECJ judgement, case C-310/99 Italy vs. Commission, judgement of March 7, 2002, ECR 2002, I-2289.

¹⁸⁰ Commission decision of 28 October 2009 on E 2/2008 – Financing of ORF, p. 120.

The following analysis confirms that no actual European Commission state aid approval, which is necessary to provide financing from the State budget to LRT, was obtained.

Firstly, GBER does not provide for any exceptions specifically aimed at financing activities of public service broadcasters.¹⁸¹

According to the Information Notice, the Republic of Lithuania supposedly justified granting of state aid as “*Aid for culture and heritage conservation*”¹⁸² under the Article 53 of GBER¹⁸³. Yet, there is no legal basis for such qualification.

Article 53(2) of GBER declares that exemption applies to activities of a museum nature, aimed at preserving certain cultural objects expressed in material or intangible form. Even though certain part of LRT’s activities could be related to such objectives (e.g. preservation of some audiovisual heritage), state aid provided under Law on LRT is directed at financing of the entire operations of LRT and the vast majority of such operations by their very nature clearly go beyond the exemption approved in Art. 53 of GBER.

In this regard it should also be noted that Art. 53(10) of GBER makes it specifically clear that “[a]id to press and magazines, whether they are published in print or electronically, shall not be eligible under this Article”. In this regard, it may be clearly concluded that exemption invoked by the Republic of Lithuania cannot justify at least granting of state aid to the operation of online news portal LRT.lt.

The Communication also confirms that provisions of GBER cannot be applied to justify State aid granted to public service broadcasters. Chapter 5 of the Communication essentially concludes that the justification provided for in Article 107(3) TFEU (expressed in the form of specific exceptions in the provisions of GBER) should not apply to state aid to public service broadcasters. The Commission also points out that, in the case of public service broadcasters, an alternative justification is used – Article 106(2) TFEU – for which the exemption referred to in GBER does not apply:

*“State aid to public service broadcasters is generally provided in the form of compensation for the fulfilment of the public service mandate and is assessed under Article 86(2), based on the criteria set out in the present Communication.”*¹⁸⁴

Having summarised the aforementioned, the Republic of Lithuania seeks to justify compatibility of funding granted to LRT on wrong legal basis. Art. 53 of GBER is clearly not suitable for the activities of public service broadcasters and currently LRT. Even GBER itself specifically refers to the exclusion of electronic press from such an exemption. Inability to justify payments to public service broadcasters has also been made clear by the European Commission in its communications on the financing of public service broadcasters.

Secondly, information provided by the Republic of Lithuania on State aid granted to LRT on the state aid transparency website does not amount to approval by the European Commission to grant State aid provided for in Article 108(3) TFEU. In this regard it should be recalled that publication of Information Notice on state aid granted on the state aid transparency website is not anyhow being assessed or decided by the European Commission. Thus, such notice is not being considered as having the same force as the approval to grant state aid by the European Commission in the light of Article 108(3) TFEU, since the purpose of the notice is merely to inform the persons concerned of the

¹⁸¹ See Art. 1(1) of GBER.

¹⁸² For the sake of accuracy, it should be noted that the form submitted by Lithuania indicates that the aid is coordinated based on Article 53 of EU Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain types of aid compatible with the common market following Articles 87 and 88 of the Treaty (General Block Exemption Regulation), but there is no such article in this Regulation. Article 53, which applies to the cultural sector, is only provided for in the subsequent block exemption regulation, i.e. Block exemption regulation, the provisions of which are being in this complaint.

¹⁸³ i.e. Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market by applying Art. 107 and 108 of the Treaty.

¹⁸⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market by applying Art. 107 and 108 of the Treaty, 35 p.

granting of the aid. Therefore, Information Notice does not justify the granting of illegal and incompatible State aid to LRT.

In this regard it should be noted that procedure of state aid notification stipulated in Art. 108(3) of TFEU is being approved by running the procedures regulated by the EU Regulation 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union¹⁸⁵. State aid provided to LRT was never notified and coordinated with the Commission. Thus, there is no approval from the European Commission that would make such state aid compatible and rule out its illegal character.

Failing a claim that Art. 53 of the GBER applies, it shall be examined hereunder whether the financing of LRT may be considered to be a compensation for carrying out a public service and whether, in applying the criteria specified in the *Altmark* judgement¹⁸⁶, the measure may escape classification as State aid under Article 107(1) TFEU.

By granting public funds as remuneration for the provision of services of general economic interest (**SGEI**), the existence of State aid within the meaning of Article 107(1) TFEU may be excluded in case all four conditions laid down in the *Altmark* case are met¹⁸⁷:

- first, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;
- second, the parameters based on which the compensation is calculated must be established in advance in an objective and transparent manner;
- third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;
- fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen under public procurement procedure which would allow for the selection of the bidder capable of providing those services at the least cost to the community, the level of compensation must be determined based on an analysis of the costs which a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations.¹⁸⁸

Financing of LRT's activities does not meet at least *third* and *fourth* *Altmark* condition, which relate to the determination of the amount of compensation paid to the SGEI service provider. Hence, *Altmark* cannot exclude presence of state aid in case of financing of LRT.

Financing of LRT's activities does not satisfy the 3rd *Altmark* condition

The third condition of *Altmark* requires that the compensation allocated by the State does not exceed the amount necessary to cover all or part of the costs of fulfilling public service obligations, taking into account the relevant revenue and reasonable profit. In interpreting the application of such a condition,

¹⁸⁵ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

¹⁸⁶ CJEU judgement of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, and *Oberbundesanwalt beim Bundesverwaltungsgericht*, C-280/00, EU:C:2003:415, p. 87 to 97.

¹⁸⁷ CJEU judgement of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, and *Oberbundesanwalt beim Bundesverwaltungsgericht*, C-280/00, EU:C:2003:415, 87-94 p.; EU General Court judgement of 24 September 2015, *TV2/Danmark A/S v European Commission*, T-674/11, EU:T:2015:684, 48 p.

¹⁸⁸ Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01, p. 23.

SGEI communication¹⁸⁹ elaborates the following criteria, which also apply for the assessment of 3rd *Altmark* condition:

- The parameters that serve as the basis for calculating compensation must be established in advance in an objective and transparent manner in order to ensure that they do not confer an economic advantage that could favour the recipient undertaking over competing undertakings¹⁹⁰;
- The compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit. Therefore, any mechanism concerning the selection of the service provider must be decided in such a way that the level of compensation is determined based on these elements.¹⁹¹

In the context of the above explanations, it is rather clear that 3rd condition of *Altmark* case requires direct link between the amount of compensation payable to the public service broadcaster and the costs incurred thereby in providing such a service. Moreover, any additional revenue generated by SGEI provider must reduce payment received as compensation for the performance of SGEI.

As it was extensively explained in this Complaint, funding of LRT is not in any way related to the costs incurred by LRT in carrying out activities of public service broadcaster. The amount of LRT funding is exclusively dependent on the state tax revenues. Moreover, any additional revenue generated by LRT within the scope of its statutory mission does not reduce payment received by LRT. In this respect it is rather clear that the Republic of Lithuania does not ensure that compensation paid by the State to LRT would not exceed the amount necessary to compensate for all or part of the costs of fulfilling public service obligations. This means that the 3rd condition required by the *Altmark* case is not satisfied.

Funding of LRT's activities does not satisfy the 4th Altmark condition as well

Based on the 4th *Altmark* criterion, compensation must be granted (i) after the end of the procurement procedure, which allows the selection of a tenderer capable of providing services at the lowest cost to the community, or (ii) by means of an average undertaking with adequate management and resources.

LRT was entrusted with the functions of a public service broadcaster without holding a tender for the selection of such a service provider. Therefore, compliance with the fourth *Altmark* criterion can be demonstrated only if there would be a system of control of public broadcasting costs in Lithuania, where the costs incurred by LRT would be determined by reference to an efficient market participant.

When assessing compliance with this condition, it is sufficient to mention that LRT funding is not in any way related to the costs incurred by LRT. Thus, assessment of the validity of LRT's costs (neither in terms of efficient costs nor costs incurred by any other company) is not carried out at all. Legal regulation applicable in Lithuania does not establish legal base for carrying out such an assessment, and the institutional system of cost control does not exist at all. Therefore, the comparison of the costs incurred by LRT with the costs of an efficient operator is not being carried out. It is well regarded in multiple decisions by the European Commission as a reasonable ground for the 4th *Altmark* criteria not to be met, see e.g. Commission decision of 22 March 2006 aide à la création de la chaîne corse Via Stella¹⁹², Commission decision of 24 April 2007 on financing of public service broadcasters in Germany¹⁹³.

¹⁸⁹ Commission Communication on the application of EU State aid rules to compensation for the provision of services of general economic interest, 2012/C 8/02.

¹⁹⁰ Commission Communication on the application of EU State aid rules to compensation for the provision of services of general economic interest, 2012/C 8/02, p. 54.

¹⁹¹ Commission Communication on the application of EU State aid rules to compensation for the provision of services of general economic interest, 2012/C 8/02, p. 60.

¹⁹² Commission decision of 22 March 2006 aide d'Etat N 638/2005 aide à la création de la chaîne corse Via Stella, p. 24.

¹⁹³ Commission decision of 24 April 2007 on State aid E 3/2005 (ex- CP 2/2003, CP 232/2002, CP 43/2003, CP 243/2004 and CP 195/2004) – Financing of public service broadcasters in Germany, p. 166.

Accordingly, in the LRT funding scheme the fourth condition required by the Altmark case is not met, therefore, it cannot be concluded that the measure in question meets all the criteria specified in the Altmark judgement in order to escape the qualification as State aid under Article 107(1) of the TFEU.

In light of the above circumstances, it can be concluded that current public service broadcaster financing scheme in the Republic of Lithuania meets all the characteristics of the State aid provided for in Article 107(1) TFEU. Such financing may therefore be granted only after obtaining the authorisation of the European Commission for State aid provided for in Article 108(1) TFEU. The Republic of Lithuania has not received such a permit. Therefore, the funding granted to LRT is considered *unlawful* and *incompatible* State aid. Under European Union State aid rules, *unlawful* State aid is forbidden to be granted, and if was granted, must be recovered together with interest.

Funding of LRT under the current or upcoming legal framework cannot be coordinated as compatible aid under *Communication from the Commission on the application of State aid rules to public service broadcasting*¹⁹⁴

Since LRT is clearly provided with unlawful state aid, it would be quite natural to expect that Lithuanian shall aim to coordinate such state aid with the Commission in accordance with the provisions of the *Communication from the Commission on the application of State aid rules to public service broadcasting*. Yet, Lithuanian financing model is so distant from the requirements established in Broadcasting communication that such coordination would be simply impossible. There are at least two obstacles for such coordination:

- Broadcasting communication accept that SGEI mission entrusted on public service broadcasters may be determined by qualitative requirements. Yet, communication makes it clear that SGEI mission “*should be as precise as possible. It should leave no doubt as to whether a certain activity performed by the entrusted operator is intended by the Member State to be included in the public service remit or not. Without a clear and precise definition of the obligations imposed upon the public service broadcaster, the Commission would not be able to carry out its tasks under Article 86(2) and, therefore, could not grant any exemption under that provision. Clear identification of the activities covered by the public service remit is also important for non-public service operators, so that they can plan their activities. Moreover, the terms of the public service remit should be sufficiently precise, so that Member States’ authorities can effectively monitor compliance, as described in the following chapter.*” (Items 45, 46).

Moreover, Commission normally expect that compliance with SGEI mission would be monitored “*in a transparent and efficient manner*” (Item 53). The Commission also considers that it may be done only by “*a body effectively independent from the management of the public service broadcaster, which has the powers and the necessary capacity and resources to carry out supervision regularly, and which leads to the imposition of appropriate remedies insofar it is necessary to ensure respect of the public service obligations*” (Item 54).

Financing model established in Lithuanian law does not contain any of such features. As explained in this Complaint above, qualitative requirements imposed on LRT by the Law on LRT are so broad that scope of SGEI mission entrusted on LRT cannot be reasonably determined. At least boundaries of such mission are not entirely clear to market participants and are totally useless trying to calculate amount of compensation needed to finance such fulfilment of such mission. Moreover, self-control of LRT mission is totally ineffective and does not meet requirements stipulated in Broadcasting communication. Control of mission entrusted on LRT is entrusted to a body, which is not independent from LRT and does not perform such control in a transparent manner. Absence of effective control is clearly manifested by the fact that LRT managed to launch and expand online news portal on the basis of subsidies received from the State irrespective from the fact that mission entrusted on LRT by the Law on LRT did not impose obligation to operate such media channel and did not impose any requirements for such operations.

¹⁹⁴ OJ C 257, 27.10.2009

- Broadcasting communication makes it clear that compensation paid to public service broadcasters should be related to costs incurred in performance of mission entrusted on broadcaster. It also requires to separate financial accounts in case broadcaster enters into public service and non-public service activities (Chapters 6.5 and 6.6 of Broadcasting communication). Moreover, Broadcasting communication requires to ensure financial control of compensation paid to public service broadcaster, which needs to be *effective*. In this respect the communication suggests the following (Item 78):

“Such control mechanisms would only seem effective if carried out by an external body independent from the public service broadcaster at regular intervals, preferably on a yearly basis. Member States shall make sure that effective measures can be put in place to recover overcompensation going beyond the provisions of the previous Chapter 6.5 and cross-subsidisation.”

The financing model established in Lithuanian law does not contain any of such features, since (i) compensation paid to LRT does not depend on costs of performance of mission entrusted on LRT; (ii) no recovery of overcompensation is possible since it is not entirely clear what are the costs of LRT in performance of mission entrusted on LRT; (iii) there is no external and independent body to monitor LRT costs (self-control exercised by LRT Council clearly does not meet independency requirement imposed by Broadcasting communication); (iv) LRT successfully managed to establish and expand online media channel clearly falling out of scope of mission entrusted on LRT on the basis of State subsidies, yet such cross subsidisation was not prevented due to the lack of separation of financial accounts and absence of any external and independent control mechanism.

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes No

If yes, please attach copies of correspondence.

c) Have you already approached national authorities or national courts concerning the same issue? *

Yes No

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

d) Please provide any other information that may be relevant for the assessment of this case.

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

- A copy of the national laws which provide the legal basis for the payment of the alleged aid:

Annex No. 1 Republic of Lithuania Law on the National Radio and Television, *Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymas*, Valstybės žinios, Oct 23, 1996, No. 102-2319, consolidated version in force since January 1, 2015 with further amendments adopted until 2020-05-07;

Annex No. 2 Amendment to the Republic of Lithuania Law on the National Radio and Television, *Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymo Nr. I-1571 pakeitimo įstatymas No. XIII-2929*, will come into force on January 1, 2021.

Annex No. 3 Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2015, *Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 23, 2014, No. 20611);

Annex No. 4 Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2016, *Lietuvos Respublikos 2016 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 21, 2015, No. 20134);

Annex No. 5 Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2017, *Lietuvos Respublikos 2017 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 29, 2016, No. 29872);

Annex No. 6 Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2018, *Lietuvos Respublikos 2018 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 20, 2017, No. 20572);

Annex No. 7 Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2019, *Lietuvos Respublikos 2019 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 20, 2018, No. 20968);

Annex No. 8 Republic of Lithuania Law on Approval of Financial Indicators of the State Budget and Municipal Budgets 2020, *Lietuvos Respublikos 2020 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas* (TAR, Dec 27, 2019, No. 21410);

Annex No. 9 Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, SA.44185 (2016/X);

- Available evidence that the State aid was granted:
 - Annex No. 10 State Aid Transparency Award Module Ref. No. TM-10077534 SA. 44185;
 - Annex No. 11 State Aid Transparency Award Module Ref. No. TM-10157878 SA. 44185;
 - Annex No. 12 State Aid Transparency Award Module Ref. No. TM-10158280 SA. 44185;
 - Annex No. 13 LRT activity report of 2018, *LRT 2018 m. veiklos ataskaita*;
- The complaint is submitted on behalf of IZA and UAB All Media Lietuva group:
 - Annex No. 14 IZA Power of Attorney to the law firm “Ellex Valiunas”;
 - Annex No. 15 Extract from the Register of Legal Entities about IZA;
 - Annex No. 16 UAB All Media Lietuva Power of Attorney to the law firm “Ellex Valiunas”;
 - Annex No. 17 Extract from the Register of Legal Entities about UAB All Media Lietuva;
 - Annex No. 18 UAB All Media Radijas Power of Attorney to the law firm “Ellex Valiunas”;
 - Annex No. 19 Extract from the Register of Legal Entities about All Media Radijas;
- Other annexes
 - Annex No. 20 Certificate on the list of members of IZA;
 - Annex No. 21 Lithuanian Population Survey on LRT, May 2019, *2019 m. gegužės Lietuvos gyventojų apklausa apie LRT*;
 - Annex No. 22 Articles of Association of IZA
 - Annex No. 23 2018-2020 strategy of LRT.
 - Annex No. 24 LRT Financial Report for the year 2018
 - Annex No. 25 All Media Lietuva (TV3) sales in public procurement tenders
 - Annex No. 26 LNK sales in public procurement tenders
 - Annex No. 27 LRT sales in public procurement tenders
 - Annex No. 28 Audience share data 2014-2019

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant

On behalf of UAB All Media Lithuania, UAB All Media Radijas and Interneto žiniasklaidos asociacija

dr. Karolis Kacerauskas,

Advocate, Member of Lithuanian Bar

22-06-2020